

# EXHIBIT Z



Volume I, Pages 1-302

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AMERICAN ARBITRATION ASSOCIATION

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5 SUNLINK CORPORATION,

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Claimant,

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vs. AAA No. 01-14-0001-7516

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AMERICAN CAPITAL ENERGY, INC.,

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Respondent.

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ARBITRATION HEARING, DAY 1

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Before: David Evans, Attorney, as Arbitrator

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Held at: Law Office of Greenberg Traurig

14

One International Place

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Boston, Massachusetts 02110

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Date: Wednesday, May 13, 2015

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Commence: 9:49 a.m.

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Reporter: Judith M. Williams, RPR, CLR, CRR, CSR

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K. L. GOOD & ASSOCIATES

21

Post Office Box 367

22

Swampscott, Massachusetts 01907

23

Tel. 781-367-0815

24

Kathleen.Good@verizon.net

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1	APPEARANCES:				1	ALSO PRESENT:			
2	Greenberg Traurig				2	Mark Ginalski, General Counsel - SunLink			
3	Paul Murphy, Attorney.				3	Casey Purcell (exiting at 10:25 a.m.)			
4	David G. Thomas, Attorney				4	Steven Collins			
5	20th Floor				5	Eric McLean			
6	One International Place				6	Dale Hackbart			
7	Boston, Massachusetts 02110				7				
8	617-310-6000				8				
9	murphyp@gtlaw.com				9				
10	thomasda@gtlaw.com				10				
11	Attorneys for the Claimant				11				
12					12				
13	Robert K. Dowd, Attorney				13				
14	4814 Bengal Street, Unit One				14				
15	Dallas, Texas 75235				15				
16	214-922-9330				16				
17	robtdowd@sbcglobal.net				17				
18	Attorney for the Respondent				18				
19					19				
20					20				
21					21				
22					22				
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1	INDEX				1	PROCEEDINGS			
2					2	---			
3					3	ARBITRATOR EVANS: On the record.			
4	WITNESSES:	Direct	Cross	Redirect	Recross	4	This is the commencement of the		
5	CHRISTOPHER TILLEY				5	arbitration involving SunLink Corporation and			
6	By Mr. Murphy	15			6	American Capital Energy. So the schedule for			
7					7	the proceedings is that we have allotted I			
8					8	believe eight days, including this Saturday --			
9	EXHIBITS:				9	MR. MURPHY: That's correct.			
10	No.	Description		Page	10	ARBITRATOR EVANS: -- to accomplish the			
11	Claimant	One-page letter dated April 2,		273	11	arbitration, and we are going to have the			
12	Exhibit 239	2014, To Whom It May Concern			12	arbitration concluded by then. So we will see			
13		on letterhead of BridgeBank			13	how it goes. Sometimes it goes a little slower			
14		Capital Finance			14	at the beginning, but people start to develop			
15	Claimant	One-page letter dated May 1,		276	15	their themes, and then they understand after a			
16	Exhibit 240	2014, To Whom It May Concern			16	while that it is not necessary to continue to			
17		on letterhead of BridgeBank			17	repeat that. So we will continue to check in on			
18		Capital Finance			18	the progress of the proceedings, and I have your			
19					19	witness list.			
20					20	So we will proceed every day from 9:30			
21					21	until 5:30-ish, 5, 5:30-ish, depending on			
22					22	whether -- how we fall with our witness'			
23					23	testimony. We will take a 15 minute or so			
24					24	comfort break in the morning and in the			

<p style="text-align: center;">6</p> <p>1 afternoon.</p> <p>2 So before we begin, I would like to have</p> <p>3 everybody just identify themselves for the</p> <p>4 record, starting with Mr. Thomas.</p> <p>5 MR. THOMAS: Sure. David Thomas for the</p> <p>6 claimant.</p> <p>7 MR. MURPHY: Paul Murphy for the</p> <p>8 claimant, SunLink.</p> <p>9 MR. GINALSKI: Good morning. I am Mark</p> <p>10 Ginalski. I am the general counsel for SunLink.</p> <p>11 MR. PURCELL: Casey Purcell, former</p> <p>12 project manager.</p> <p>13 MR. COLLINS: Steve Collins from</p> <p>14 Navigant engaged by counsel for SunLink.</p> <p>15 MR. TILLEY: Christopher Tilley, former</p> <p>16 CEO of SunLink.</p> <p>17 MR. McLEAN: Eric McLean, executive</p> <p>18 president of operations, ACE.</p> <p>19 MR. DOWD: Robert Dowd representing</p> <p>20 outside general counsel for American Capital</p> <p>21 Energy.</p> <p>22 MR. HACKBART: Dale Hackbart. I work</p> <p>23 for Mr. Dowd.</p> <p>24 ARBITRATOR EVANS: Okay. Are we going</p>	<p style="text-align: center;">7</p> <p>1 to have opening statements?</p> <p>2 MR. MURPHY: We are not going to open.</p> <p>3 We were going to go right to Mr. Tilley and</p> <p>4 effectively waive our opening. There has been a</p> <p>5 lot of communication about our motion until this</p> <p>6 point in time. I think it would be better to</p> <p>7 use the time to get through witnesses.</p> <p>8 MR. DOWD: I would prefer doing an</p> <p>9 opening. What has transpired here is I have</p> <p>10 filed a couple of motions, and they have</p> <p>11 basically presented their position to you. You</p> <p>12 asked for a contract. They sent you a contract</p> <p>13 with their position. I filed a motion on the</p> <p>14 BridgeBank documents. They also sent another</p> <p>15 position letter. They have had a chance, I</p> <p>16 think, to lay out some of the things we need to</p> <p>17 be thinking about. I feel like we should at</p> <p>18 least be able to talk about certain issues that</p> <p>19 are part of our case and what we are dealing</p> <p>20 with.</p> <p>21 ARBITRATOR EVANS: Okay. Would you like</p> <p>22 to --</p> <p>23 MR. MURPHY: Could I make a suggestion?</p> <p>24 Would Mr. Dowd want to reserve that until the</p>
<p style="text-align: center;">8</p> <p>1 beginning of his case?</p> <p>2 ARBITRATOR EVANS: That was going to be</p> <p>3 my question.</p> <p>4 MR. DOWD: I would prefer to do a short</p> <p>5 statement now dealing with certain issues that</p> <p>6 are key before the testimony starts coming out</p> <p>7 with respect to that.</p> <p>8 ARBITRATOR EVANS: Okay.</p> <p>9 MR. DOWD: That is up to you, your</p> <p>10 Honor.</p> <p>11 ARBITRATOR EVANS: Well, I will</p> <p>12 certainly give you that opportunity. So we will</p> <p>13 -- is there anything else in terms of</p> <p>14 preliminary matters? I did get a motion that I</p> <p>15 just skimmed from SunLink respecting exhibits,</p> <p>16 and I don't think that needs to be dealt with at</p> <p>17 this moment. Is there any other -- are there</p> <p>18 any other preliminary matters from ACE's</p> <p>19 perspective?</p> <p>20 MR. DOWD: I believe that the different</p> <p>21 rulings you were making this morning around 9:30</p> <p>22 took care of various issues that were</p> <p>23 outstanding from that standpoint. The only</p> <p>24 thing that I would probably be requesting later</p>	<p style="text-align: center;">9</p> <p>1 today is they noted that Mr. Tilley would take</p> <p>2 six hours which means that that would take up</p> <p>3 the day basically. I got all of these exhibits</p> <p>4 yesterday about eleven o'clock, another thousand</p> <p>5 I got about three or four o'clock. So I would</p> <p>6 request that I would not start my cross of</p> <p>7 Mr. Tilley until I have had a chance tonight to</p> <p>8 put this together from there. Otherwise, I</p> <p>9 think we will be wasting a lot more time trying</p> <p>10 to grind through this stuff.</p> <p>11 ARBITRATOR EVANS: Well, are these</p> <p>12 exhibits that you hadn't -- are these documents</p> <p>13 that you hadn't seen before?</p> <p>14 MR. DOWD: No. They were sent to --</p> <p>15 they were supposed -- I was told they were sent</p> <p>16 to Dallas. I never got them in Dallas. So they</p> <p>17 hand delivered and had them delivered yesterday</p> <p>18 out to ACE arriving around eleven o'clock</p> <p>19 yesterday. That is the three boxes here, and</p> <p>20 then I sent someone down, and we picked up</p> <p>21 another box of documents which was delivered to</p> <p>22 me about three or four.</p> <p>23 ARBITRATOR EVANS: All right. Let me</p> <p>24 ask this question. Mr. Tilley, are you expected</p>

<p style="text-align: center;">10</p> <p>1 to be around tomorrow?</p> <p>2 THE WITNESS: Yes.</p> <p>3 ARBITRATOR EVANS: Okay. So we have a</p> <p>4 little bit of flexibility. We will try to work</p> <p>5 around that. Do you have something you want to</p> <p>6 say?</p> <p>7 MR. MURPHY: Just for the record.</p> <p>8 MR. THOMAS: Other than that we sent the</p> <p>9 exhibits on a USB drive Thursday night per the</p> <p>10 scheduling order to Mr. Dowd's office.</p> <p>11 MR. DOWD: They sent someone to my</p> <p>12 office on Monday night to find it. There is</p> <p>13 nothing there, so.</p> <p>14 MR. MURPHY: We didn't have any exchange</p> <p>15 from Mr. Dowd until last night. That is the</p> <p>16 first time we ever saw any of his exhibits, and</p> <p>17 it was supposed to be an exchange on the 7th,</p> <p>18 which is essentially what the scheduling order</p> <p>19 plus what the parties had talked about. I just</p> <p>20 make those comments for the record at this</p> <p>21 point.</p> <p>22 ARBITRATOR EVANS: Well, I don't mean to</p> <p>23 be picky. Under the scheduling order, all of</p> <p>24 these documents were supposed to be exchanged</p>	<p style="text-align: center;">11</p> <p>1 March 2nd I think.</p> <p>2 MR. MURPHY: Then we agreed.</p> <p>3 ARBITRATOR EVANS: A pox on everyone's</p> <p>4 houses in some respects.</p> <p>5 Why don't we proceed with Mr. Dowd wants</p> <p>6 to make a statement. Keep it relatively brief.</p> <p>7 MR. DOWD: The a major issue in this</p> <p>8 case that has not been unfolded or dealt with</p> <p>9 deals with the SREC issue with respect to the</p> <p>10 case itself. SRECs are in fact Solar Energy</p> <p>11 Renewable Certificates. They are in fact</p> <p>12 consist of about in this particular case with 40</p> <p>13 quarters of SRECs their cash flow is \$84 million</p> <p>14 in this case.</p> <p>15 This project was moving forward with</p> <p>16 respect to its construction over a period of</p> <p>17 years, when in fact in May of 2013 the</p> <p>18 Department of Energy issued a statement to the</p> <p>19 effect that the SREC is now filled; it is now</p> <p>20 over its application process.</p> <p>21 This deal was then dead. \$84 million</p> <p>22 was going down the tube, and although ACE had</p> <p>23 executed MIPA, which is net interest purchase</p> <p>24 agreement, it executed an agreement to pay</p>
<p style="text-align: center;">12</p> <p>1 \$5 million for created SRECs and EPC contracts.</p> <p>2 Everything was put on hold, all of which was</p> <p>3 totally within the knowledge of and sent to</p> <p>4 specifically Jonathan Eastwood, John Eastwood,</p> <p>5 with regards to that this transaction was dead</p> <p>6 as of that unless the Department of Energy would</p> <p>7 step forward and change the regulations for our</p> <p>8 proceeding forward.</p> <p>9 We stayed in touch with SunLink and</p> <p>10 provided them the SREC regulations that set</p> <p>11 forth that this project could in fact qualify</p> <p>12 for SRECs if it in fact had a number of things</p> <p>13 done, interconnection agreements, the various</p> <p>14 permits, et cetera, all of which ACE did.</p> <p>15 However, there was an absolute specific</p> <p>16 deadline that this project had to be built by</p> <p>17 June of 2014. If this project is not built by</p> <p>18 June 2014, \$84 million would have been lost,</p> <p>19 because it would not qualify under the new</p> <p>20 regulations that the SREC had set forth.</p> <p>21 That was all known to SunLink from the</p> <p>22 very inception of it. And in October of 2013,</p> <p>23 SunLink was specifically contacted that they can</p> <p>24 fulfill what is in fact in the contracts for</p>	<p style="text-align: center;">13</p> <p>1 delivery of the various products in this case.</p> <p>2 That they would arrive so that this could in</p> <p>3 fact be built by the June deadline and not lose</p> <p>4 the SREC-1 qualifications.</p> <p>5 In that those different documents -- as</p> <p>6 a result of the representations made by SunLink</p> <p>7 at the time, ACE paid \$5 million to purchase</p> <p>8 SRECs to CV Owner One LLC, to purchase the</p> <p>9 5 million of SRECs at \$285. That is something</p> <p>10 that has to be, of course, created by the</p> <p>11 construction of this job.</p> <p>12 At no time did SunLink reveal that in</p> <p>13 fact they were going to deal with the production</p> <p>14 of the rails, A-frames, which is really the key</p> <p>15 items here, in China, which in fact after we</p> <p>16 signed the contract, after we pay the</p> <p>17 \$5 million, after we're set to move forward with</p> <p>18 the construction, we receive a schedule from</p> <p>19 SunLink in January that sets forth that they are</p> <p>20 going to complete these projects by August of</p> <p>21 2014.</p> <p>22 August of 2014, after supplying John</p> <p>23 Eastwood and everyone of the seriousness of the</p> <p>24 SRECs, the necessity of moving forward with</p>

<p style="text-align: center;">14</p> <p>1 that, all of a sudden they're coming back from</p> <p>2 their operation saying that, "Well, we'll get</p> <p>3 this done by August."</p> <p>4 By all of their delays and dealings, we</p> <p>5 ended up getting this material as late as June,</p> <p>6 when in fact it has to be built in June. The</p> <p>7 result of all of that was that we had to hire</p> <p>8 hundreds and hundreds of electricians to be able</p> <p>9 to finish this project.</p> <p>10 And that the two things that I would</p> <p>11 like to emphasize here is that the SRECs, their</p> <p>12 knowledge of the SRECs, their representations</p> <p>13 about what they would in fact get done, when in</p> <p>14 fact it totally would cost us a tremendous</p> <p>15 amount of money because of it, and we barely</p> <p>16 made it because of it, but I lay those out.</p> <p>17 And also the fact that the key elements</p> <p>18 here really deal with A-frames and rails. Those</p> <p>19 are the items coming out of China that were</p> <p>20 causing the greatest headache with respect to</p> <p>21 the construction of this deal.</p> <p>22 You have a base which is a concrete</p> <p>23 base. You have on top of that rods. You have a</p> <p>24 series of things that have to be done for the</p>	<p style="text-align: center;">15</p> <p>1 job: ballast, rods. The rods then go the</p> <p>2 frames, the A-frames, and then you have the</p> <p>3 rails, and then you have the modules.</p> <p>4 So you cannot do anything, you cannot</p> <p>5 bring in your electricians and do anything,</p> <p>6 until you get these items which could have been</p> <p>7 delivered by February 28th but weren't in fact</p> <p>8 delivered until as late as June.</p> <p>9 Those are the points I would like to</p> <p>10 point out before we start, your Honor.</p> <p>11 ARBITRATOR EVANS: Thank you.</p> <p>12 MR. MURPHY: Thank you, Mr. Evans.</p> <p>13 We call Mr. Tilley to the stand, please.</p> <p>14 (Witness sworn by the Arbitrator.)</p> <p>15 CHRISTOPHER TILLEY</p> <p>16 DIRECT EXAMINATION</p> <p>17 BY MR. MURPHY:</p> <p>18 Q. Good morning, Mr. Tilley.</p> <p>19 A. Good morning.</p> <p>20 Q. Could you tell us where you live, sir, please?</p> <p>21 A. California. Larkspur, California.</p> <p>22 Q. Okay. And you identified yourself as the former</p> <p>23 CEO of SunLink. Could you just tell us the</p> <p>24 years when you were the CEO of SunLink?</p>
<p style="text-align: center;">16</p> <p>1 A. 2007 through the end of 2015.</p> <p>2 Q. Okay.</p> <p>3 A. 2014. Excuse me.</p> <p>4 Q. Could you just briefly summarize for us your</p> <p>5 educational background, your formal educational</p> <p>6 background starting with your college, please?</p> <p>7 A. Okay. You don't want elementary school?</p> <p>8 Q. Not junior high.</p> <p>9 A. Okay. So I have a Bachelor's in Engineering,</p> <p>10 Mechanical Engineering, from Louisiana State</p> <p>11 University. I have a Master's in Mechanical</p> <p>12 Engineering from Perdue University. And I have</p> <p>13 a Master's in Business Administration from a</p> <p>14 school called INSEAD, I-N-S-E-A-D, it is an</p> <p>15 acronym, in France.</p> <p>16 Q. And do are you a licensed professional engineer?</p> <p>17 A. I am, in California.</p> <p>18 Q. In California?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And can you summarize for us some of your</p> <p>21 background before joining SunLink in the 2007</p> <p>22 time frame?</p> <p>23 A. Sure. I went directly from undergraduate to</p> <p>24 graduate at Perdue. After that I took my first</p>	<p style="text-align: center;">17</p> <p>1 job at Bechtel Corporation. So I worked at</p> <p>2 Bechtel in San Francisco in the research and</p> <p>3 development division working on engineering</p> <p>4 technologies. I worked at Bechtel for about</p> <p>5 three years on different energy and related</p> <p>6 projects and tools for their projects and</p> <p>7 construction and the engineering business.</p> <p>8 I left Bechtel and went to France to do</p> <p>9 an M.B.A.</p> <p>10 After France, I left and moved to</p> <p>11 Argentina. I lived in Buenos Aires working</p> <p>12 briefly for a management consulting firm by the</p> <p>13 name of Booz Allen Hamilton.</p> <p>14 I then went to work for a large Spanish</p> <p>15 investment bank, Santander Investment, and</p> <p>16 worked in their investment arm of the bank --</p> <p>17 actually they --</p> <p>18 Q. Santander?</p> <p>19 A. -- are in this lobby -- in Argentina in the</p> <p>20 early '90s.</p> <p>21 After about three years in Buenos Aires,</p> <p>22 I moved back to the United States to California,</p> <p>23 to San Francisco, and I started my first</p> <p>24 business, which was a business that provided a</p>

<p style="text-align: center;">18</p> <p>1 business in -- emerging market business</p> <p>2 information to management consulting firms and</p> <p>3 investment banks, you know, Goldman, Merrill,</p> <p>4 McKinsey, Booz Allen were all clients --</p> <p>5 customers of that service. I grew that to a</p> <p>6 reasonably successful company. Ultimately I</p> <p>7 sold it to Thompson Financial here in Boston.</p> <p>8 I stayed on to run it for Thompson for a</p> <p>9 year, and then in 2000 I left and spent some</p> <p>10 time trying to figure out what I wanted to do</p> <p>11 working on different clean energy technologies.</p> <p>12 I like technologies. I like environmental sort</p> <p>13 of clean income stuff. So I spent time looking</p> <p>14 at fuel cells in different areas.</p> <p>15 I ended up meeting someone who had a</p> <p>16 small what is called a solar integrator, and</p> <p>17 they were just starting some commercial work,</p> <p>18 and they asked me to come in as president. So I</p> <p>19 came in as president of that company. We raised</p> <p>20 money, and we grew that to be one of the larger</p> <p>21 solar integrators in California.</p> <p>22 What an integrator does is essentially</p> <p>23 we sell solar projects. We then do the</p> <p>24 engineering. We then run the construction, and</p>	<p style="text-align: center;">19</p> <p>1 we deliver to a client, so.</p> <p>2 Q. What is the name of that company?</p> <p>3 A. That name of that was Prevalent Power.</p> <p>4 Q. Prevalent Power?</p> <p>5 A. Prevalent Power.</p> <p>6 That was my introduction to the solar</p> <p>7 market, and a good introduction at that, because</p> <p>8 you get to see from soup to nuts what needs to</p> <p>9 be done.</p> <p>10 I sold that company. We sold that</p> <p>11 company in I think it was 2004, 2005, after</p> <p>12 doing a lot of projects. So we did -- we were</p> <p>13 one of the larger ones in California at the</p> <p>14 time. We had done schools; we had done office</p> <p>15 buildings; we had done wineries; we did water</p> <p>16 districts. We did, you know, lots of different</p> <p>17 commercial solar systems. Not residences. All</p> <p>18 large commercial stuff.</p> <p>19 After I left, after we sold it to a</p> <p>20 company called Energy Innovations, I stayed on</p> <p>21 for a year after that, and after that, I came on</p> <p>22 to SunLink, so.</p> <p>23 Q. And how were you brought into SunLink? Did you</p> <p>24 have someone who essentially hired you?</p>
<p style="text-align: center;">20</p> <p>1 A. Yes. John Eastwood.</p> <p>2 Q. John Eastwood?</p> <p>3 A. Yes. Who was the founder.</p> <p>4 Q. You said that was in the 2006-'07 time frame?</p> <p>5 A. Yes. 2005-2006 time frame.</p> <p>6 Q. All right. Can you explain the business of</p> <p>7 SunLink? I mean you were there obviously as the</p> <p>8 CEO from 2007 until just this year. What --</p> <p>9 ARBITRATOR EVANS: I am sorry. What are</p> <p>10 the dates of your tenure at SunLink?</p> <p>11 THE WITNESS: So the first stint</p> <p>12 starting in 2006 or 2005 I worked largely as a</p> <p>13 consultant helping do things. You can call that</p> <p>14 that I was with SunLink. I think 2007 is when I</p> <p>15 officially came in as CEO, although I had been</p> <p>16 acting somewhat like that for several months</p> <p>17 before that. I officially left as CEO</p> <p>18 December 31st of last year, so.</p> <p>19 BY MR. MURPHY:</p> <p>20 Q. Do you have a current relationship with SunLink</p> <p>21 today?</p> <p>22 A. Right now I have a strategic consulting</p> <p>23 agreement with them.</p> <p>24 Q. Okay. You are consulting on business matters</p>	<p style="text-align: center;">21</p> <p>1 with them presently?</p> <p>2 A. Yes. Different strategies on different business</p> <p>3 matters, and I am here under that.</p> <p>4 Q. Okay. Can you describe for me, please,</p> <p>5 SunLink's business? And obviously there is a</p> <p>6 span of time where you are the CEO of that</p> <p>7 organization. I gather things changed. Not</p> <p>8 everything stays the same.</p> <p>9 Can you give us a little bit of a</p> <p>10 50,000-foot view of the organization, its</p> <p>11 growth, what it did when you got there, and sort</p> <p>12 of what happened under your tenure there to that</p> <p>13 company, please?</p> <p>14 A. I will be happy. I think it may be worthwhile</p> <p>15 to start a little bit with the reason I went to</p> <p>16 SunLink.</p> <p>17 Q. Sure.</p> <p>18 A. If you look at like a slightly different</p> <p>19 picture, if you look at a solar project and you</p> <p>20 are trying to put together a solar project, you</p> <p>21 have really -- to make it simple, you have four</p> <p>22 or five things you need to worry about, three of</p> <p>23 which are material supply-type items.</p> <p>24 One is your modules. That is always a</p>



<p style="text-align: center;">22</p> <p>1 big deal. These are the panels that you see</p> <p>2 that turn into DC electricity. They typically</p> <p>3 represent -- at the time they represented</p> <p>4 probably 70 or 80 percent of the value of the</p> <p>5 project. Now it is a lot less. They are still</p> <p>6 probably the major expense.</p> <p>7 Q. The solar panels themselves?</p> <p>8 A. Yes.</p> <p>9 Q. Yes.</p> <p>10 A. You have something that is called an inverter,</p> <p>11 which converts DC electricity into AC</p> <p>12 electricity.</p> <p>13 And those things are both kind of -- I</p> <p>14 don't want to call them commodities. Close to</p> <p>15 it. You can buy them. There is packaged,</p> <p>16 well-developed industries around them.</p> <p>17 Then the other, for lack of a better</p> <p>18 word, the other stuff is called the balance of</p> <p>19 system. The main component of the balance of</p> <p>20 system is structures or racking.</p> <p>21 So if you put one of these modules on a</p> <p>22 rooftop, you need a structure to connect it to</p> <p>23 the rooftop or support it there. To put it in</p> <p>24 the ground, you need a post in a structure.</p>	<p style="text-align: center;">23</p> <p>1 That is called a mounting system. I am sure</p> <p>2 that language will come up a lot in this,</p> <p>3 mounting system, mounting structure. That is</p> <p>4 mainly what SunLink does.</p> <p>5 I mention there are two other aspects to</p> <p>6 a project when you are looking at it as an</p> <p>7 integrator or developer. You have got your</p> <p>8 labor cost, which is a really big one as well.</p> <p>9 And you have some engineering.</p> <p>10 Engineering tends to be to get permitting, make</p> <p>11 sure things are safe. It tends to be a low cost</p> <p>12 item. It can have a big impact on things.</p> <p>13 When you are doing this --</p> <p>14 Q. I am sorry. One second. You said labor costs.</p> <p>15 Do you mean the costs to install?</p> <p>16 A. Contracting, yes.</p> <p>17 Q. The actual installation? The construction?</p> <p>18 A. That's right.</p> <p>19 Q. Okay.</p> <p>20 A. So you have got modules, inverter, balance of</p> <p>21 system, and construction costs, and when I was</p> <p>22 in that business, the thing that was the most</p> <p>23 challenging to some degree oftentimes was the</p> <p>24 balance of system, because it changes depending</p>
<p style="text-align: center;">24</p> <p>1 on what your site is, where you are at. It</p> <p>2 affects the things that are difficult to do.</p> <p>3 If you are on a rooftop, maybe the roof</p> <p>4 can support something or it can't. So what</p> <p>5 would keep me up at night in terms of an</p> <p>6 integrator as a risk in getting a project done</p> <p>7 would be the balance of system. It had a</p> <p>8 knockdown effect on labor, making sure you can</p> <p>9 get things installed at the cost point you</p> <p>10 needed to.</p> <p>11 So I saw, when I left Prevalent Power, I</p> <p>12 saw balance of system being a real opportunity,</p> <p>13 an area of real opportunity. That is why I</p> <p>14 liked it.</p> <p>15 When I came to SunLink, it does balance</p> <p>16 of system work. At the time I joined, John</p> <p>17 Eastwood developed a roof mount product. It is</p> <p>18 a roof structure product that didn't penetrate.</p> <p>19 You didn't have to go into the roof membrane to</p> <p>20 put it on. So it was a ballasted product.</p> <p>21 I thought that was a great place to</p> <p>22 start. So over time, you know, for many years</p> <p>23 that was our core product, and we developed an</p> <p>24 enormous amount of IP, intellectual property,</p>	<p style="text-align: center;">25</p> <p>1 around this roof mounting product system. It</p> <p>2 probably will be worthwhile at some point, maybe</p> <p>3 now is the time to talk a little bit about that</p> <p>4 IP, because I think it is fundamental to what</p> <p>5 SunLink does.</p> <p>6 Q. Sure.</p> <p>7 A. I found this really interesting when I was</p> <p>8 starting out in looking at how people design</p> <p>9 roofs. I figured you are sticking this stuff on</p> <p>10 a rooftop. How do you know how to design for</p> <p>11 that? Right? How do you know what the loads</p> <p>12 are?</p> <p>13 Q. You say the "loads." Do you mean structural</p> <p>14 loads or wind loads?</p> <p>15 A. All of them.</p> <p>16 Q. All of them?</p> <p>17 A. But mainly wind loads. Wind loads are the</p> <p>18 really tricky ones. As an engineer, you can't</p> <p>19 write equations for this, for wind loads. It is</p> <p>20 too complex. Right? So you have to do testing.</p> <p>21 And what I found out was that the way</p> <p>22 that the U.S. Building Code is built, it is</p> <p>23 built around a series of tests that were done in</p> <p>24 the '70s where they did a lot of wind tunnel</p>

<p style="text-align: center;">26</p> <p>1 testing. They said a building, like a flat roof</p> <p>2 building out there, you need to design the roof</p> <p>3 for this much wind load. They did it by putting</p> <p>4 a building like that in a wind tunnel and</p> <p>5 measuring the pressures on it. But they had to</p> <p>6 draw a base that extrapolated out to the whole</p> <p>7 building code. To this day the building code is</p> <p>8 based on the tests done in the early 70s.</p> <p>9 My idea was let's figure out how to do</p> <p>10 this for solar risk because if you just use the</p> <p>11 roof pressures to design what the pressures will</p> <p>12 be on the solar modules on a roof, the answer</p> <p>13 would be incorrect, completely incorrect. Wind</p> <p>14 works very differently.</p> <p>15 I found the people that did the original</p> <p>16 testing in the '70s, and it is an aerodynamic</p> <p>17 lab in Canada. I went to them. I said I want</p> <p>18 you to put together a program for me that will</p> <p>19 do the same thing for modules so we will be the</p> <p>20 only guys that know really how you install these</p> <p>21 properly. And I want something that fits into</p> <p>22 the U.S. Building Code. Right?</p> <p>23 So we embarked probably six years, many</p> <p>24 millions of dollars on the testing program,</p>	<p style="text-align: center;">27</p> <p>1 understanding that, understanding what the wind</p> <p>2 loads are on modules, to understand.</p> <p>3 So that is the core piece of what</p> <p>4 SunLink did early on.</p> <p>5 Q. All right.</p> <p>6 MR. MURPHY: Excuse me, Chris.</p> <p>7 I have this note that Eli Florence wants</p> <p>8 to come in for the arbitration. Did you tell</p> <p>9 him to be here today?</p> <p>10 MR. DOWD: No. His counsel was advised</p> <p>11 of everything from there, so.</p> <p>12 MR. MURPHY: Can I just take a minute?</p> <p>13 ARBITRATOR EVANS: All right.</p> <p>14 MR. MURPHY: I think this is a</p> <p>15 disconnect from this morning.</p> <p>16 (Recess taken at 10:13 a.m.)</p> <p>17 (Recess ended at 10:18 a.m.)</p> <p>18 ARBITRATOR EVANS: Are you ready to</p> <p>19 resume, Mr. Tilley?</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. MURPHY:</p> <p>22 Q. Sorry, Mr. Tilley. You were talking about your</p> <p>23 SunLink experience. You were talking about some</p> <p>24 of the background information relative to the</p>
<p style="text-align: center;">28</p> <p>1 company and how it got to where it is.</p> <p>2 A. Yes. So I mentioned the aerodynamics being</p> <p>3 really our specialty. So what that enables is</p> <p>4 SunLink is a supplier of components for the</p> <p>5 mounting system, mainly racking components,</p> <p>6 structures. One of the things that gives us an</p> <p>7 advantage is the engineering knowledge, the way</p> <p>8 that we configure those structures and the way</p> <p>9 we design those structures to provide what the</p> <p>10 loads are on a building specifically, but in</p> <p>11 general, loads.</p> <p>12 So when we put out an array, depending</p> <p>13 on its configuration -- by "an array," it is a</p> <p>14 lot of modules. Depending on the tilt angle,</p> <p>15 depending how high it is off the roof, depending</p> <p>16 on where it is on the roof, the tilt angle, how</p> <p>17 high it is off the ground, those types of</p> <p>18 things, we from the data from the testing</p> <p>19 program, which is proprietary, we can say, you</p> <p>20 know, with a great deal of certainty what the</p> <p>21 loads should be used for design.</p> <p>22 So SunLink sells these mounting</p> <p>23 structures, but along with it comes this energy</p> <p>24 component.</p>	<p style="text-align: center;">29</p> <p>1 Q. Okay.</p> <p>2 A. And that's what we do.</p> <p>3 Q. Sure. Sure.</p> <p>4 At some point -- and we are going to</p> <p>5 hear a lot more in this arbitration about BGMS,</p> <p>6 or ballasted ground mount systems. Just explain</p> <p>7 that and sort of SunLink's role, sort of</p> <p>8 evolving role in that space, please.</p> <p>9 A. So I should point out that the first many years,</p> <p>10 the first three or four years of SunLink's</p> <p>11 existence from 2007 to really 2010, almost all</p> <p>12 of our business was on roof mount, flat</p> <p>13 commercial roof mount projects. We did the same</p> <p>14 type of testing for stuff on the ground, which</p> <p>15 is different. We built a series of structures</p> <p>16 for ground mount systems. One of those systems</p> <p>17 is very similar. It turns out the projects in</p> <p>18 question, many of them, most of them are on a</p> <p>19 capped landfill. It turns out that a capped</p> <p>20 landfill is somewhat like a roof, because you</p> <p>21 have a structural thing that you are not</p> <p>22 supposed to mess up. Right?</p> <p>23 Q. The cap?</p> <p>24 A. The cap. So the loads from aerodynamic loads</p>

<p style="text-align: center;">30</p> <p>1 when wind blows against the modules that are at</p> <p>2 a tilt angle, it pushes down on them or pulls</p> <p>3 up, depending on, you know, the scenario, and so</p> <p>4 a ballasted system, you don't want -- oftentimes</p> <p>5 if the soil is good you just drive a pile in,</p> <p>6 put a concrete foundation or put something into</p> <p>7 the ground.</p> <p>8 Q. Or a post?</p> <p>9 A. If you have something like a capped landfill,</p> <p>10 similar to a rooftop, you may just try to do it</p> <p>11 with a big concrete block. You are not actually</p> <p>12 going to go into the soil. You are just putting</p> <p>13 something on top of it. The weight of that</p> <p>14 block is called a ballast block, we will refer</p> <p>15 to. That is what keeps it from flying away --</p> <p>16 right? -- or moving. It can move in a lot of</p> <p>17 different ways.</p> <p>18 So you have this big ballast block. Our</p> <p>19 ballasted ground mount system is a mounting</p> <p>20 structure for solar modules on the ground that</p> <p>21 has a big ballast block of concrete. It then</p> <p>22 has a steel mounting structure that goes up.</p> <p>23 You will hear this term, something called an</p> <p>24 A-frame that sits on a big ballast block. It</p>	<p style="text-align: center;">31</p> <p>1 looks like an "A." That is why it is called an</p> <p>2 A-frame.</p> <p>3 Then there are two rails that go across</p> <p>4 like this.</p> <p>5 (Witness gesturing.)</p> <p>6 A. And the modules go on the rails like this.</p> <p>7 (Witness gesturing.)</p> <p>8 A. It is a very simple system. That is our</p> <p>9 ballasted ground mount system, and that was the</p> <p>10 system that was deployed on almost all of these</p> <p>11 projects.</p> <p>12 Q. SunLink is not in the business of installation,</p> <p>13 is it?</p> <p>14 A. No.</p> <p>15 Q. Does it do any construction per se?</p> <p>16 A. No. Absolutely not.</p> <p>17 Q. It is strictly supply of materials?</p> <p>18 A. We are a material supplier with a little bit of</p> <p>19 engineering. We do provide some engineering.</p> <p>20 Q. We don't turn a screw on the job? We don't</p> <p>21 install a thing?</p> <p>22 A. No.</p> <p>23 Q. Okay. And as to the modules generally, we don't</p> <p>24 participate in the supply of the modules</p>
<p style="text-align: center;">32</p> <p>1 themselves, do we?</p> <p>2 A. No.</p> <p>3 Q. Okay. And typically that is undertaken by the</p> <p>4 developer independently or the EPC contractor or</p> <p>5 whomever?</p> <p>6 A. Absolutely. I should mention that we oftentimes</p> <p>7 have to work with the module manufacturers to</p> <p>8 certify that our mounting system will work with</p> <p>9 their modules. We are involved in modules that</p> <p>10 way. We don't supply modules. We are not part</p> <p>11 of that business in any other way than that.</p> <p>12 Q. Okay. Now could you tell us --</p> <p>13 MR. DOWD: I am sorry. That is -- may I</p> <p>14 interrupt for one second? I thought you said</p> <p>15 you were Mike Pristoni. Are you Casey Purcell?</p> <p>16 MR. PURCELL: I am Casey Purcell.</p> <p>17 MR. DOWD: Your Honor, I would like to</p> <p>18 invoke the rule as far as having witnesses</p> <p>19 present during the course of the proceedings</p> <p>20 unless they are representing the company. I</p> <p>21 thought he was Mike. I don't know why. My ears</p> <p>22 are bad.</p> <p>23 MR. MURPHY: I have no reason to have</p> <p>24 Mr. Purcell excluded from the room.</p>	<p style="text-align: center;">33</p> <p>1 ARBITRATOR EVANS: The general rule is</p> <p>2 that witnesses are excluded with the exception</p> <p>3 of party representatives. I will say Mark -- I</p> <p>4 don't know your last name -- can stay. The rule</p> <p>5 doesn't apply to experts either.</p> <p>6 MR. MURPHY: Okay.</p> <p>7 ARBITRATOR EVANS: Regrettably,</p> <p>8 Mr. Purcell, you have to leave.</p> <p>9 MR. MURPHY: If you want to check back,</p> <p>10 we have a number for you. We will advise you as</p> <p>11 work it out. Okay?</p> <p>12 MR. PURCELL: Yes.</p> <p>13 MR. MURPHY: Thanks, Casey.</p> <p>14 (Mr. Purcell exiting the hearing room at</p> <p>15 10:25 a.m.)</p> <p>16 MR. MURPHY: Okay. Back on the record?</p> <p>17 ARBITRATOR EVANS: Yes.</p> <p>18 THE WITNESS: Can I -- maybe I shouldn't</p> <p>19 ask this question. I am just curious. So Eric,</p> <p>20 for example?</p> <p>21 MR. MURPHY: What is Eric doing here?</p> <p>22 MR. DOWD: He is here as a</p> <p>23 representative of the company.</p> <p>24 MR. MURPHY: He is also going to</p>

<p style="text-align: center;">34</p> <p>1 testify.</p> <p>2 MR. DOWD: Yes. But we get to have a</p> <p>3 representative from the company. He can stay as</p> <p>4 a party representative even though he will be a</p> <p>5 witness. The only time this comes up, people</p> <p>6 start to shuffle party representatives around</p> <p>7 and be witnesses. That is not the case here.</p> <p>8 He is the only party representative. He is</p> <p>9 entitled to be here. The only issue that would</p> <p>10 come up is if he is testifying I would like to</p> <p>11 have a representative of the company of course</p> <p>12 present for when he is testifying, essentially</p> <p>13 during that.</p> <p>14 ARBITRATOR EVANS: We will cross that</p> <p>15 bridge when we come to it. For the time being,</p> <p>16 he is entitled to stay.</p> <p>17 Did you want to say something else?</p> <p>18 MR. MURPHY: No. I am fine. Thank you.</p> <p>19 BY MR. MURPHY:</p> <p>20 Q. Mr. Tilley, getting back to your testimony, so</p> <p>21 we are talking about -- could you explain the</p> <p>22 sort of structure of the SunLink organization</p> <p>23 essentially when you were there as CEO?</p> <p>24 A. In general?</p>	<p style="text-align: center;">35</p> <p>1 Q. Yes.</p> <p>2 A. I think I know what you mean. Let me --</p> <p>3 Q. Yes.</p> <p>4 A. -- give it a try and you tell me.</p> <p>5 Q. Yes.</p> <p>6 A. We were functionally divided into groups where</p> <p>7 there is a supply chain group, which managed our</p> <p>8 suppliers and manufacturing to produce stuff.</p> <p>9 We had a sales group that was a separate group.</p> <p>10 We had a finance and accounting group that was a</p> <p>11 separate group. And we had a marketing group</p> <p>12 that was separate. But that is generally how we</p> <p>13 were organized.</p> <p>14 Q. Okay. In sales you had project management and</p> <p>15 supply chain, you had engineering?</p> <p>16 A. Engineering was a separate group. I forgot</p> <p>17 engineering.</p> <p>18 Q. All reporting ultimately up to you as CEO?</p> <p>19 A. That is correct.</p> <p>20 Q. Can you give us a sense of sort of, you know,</p> <p>21 where the company was sort of sizewise when you</p> <p>22 got there and where when you left kind of thing?</p> <p>23 Kind of an overview?</p> <p>24 A. Yes. So we -- when I came there, they had the</p>
<p style="text-align: center;">36</p> <p>1 first sales, they were a couple of hundred</p> <p>2 thousand dollars, I think \$300,000 in sales at</p> <p>3 the time I arrived. So this would have been in</p> <p>4 2006 -- 2006 or so. And when I left last year</p> <p>5 its sales were almost 60 million, so.</p> <p>6 Q. All right. When you were there, was ACE,</p> <p>7 American Capital Energy, the respondent in this</p> <p>8 case, were they an existing customer of</p> <p>9 SunLink's?</p> <p>10 A. Yes. They were an early -- they weren't a</p> <p>11 customer when I arrived, but very soon, they</p> <p>12 were a customer, one of our older longer-term</p> <p>13 customer. They had been a customer of ours for</p> <p>14 quite a while before these projects started.</p> <p>15 Q. All right. Had you ever had any difficulties in</p> <p>16 the relationship with ACE, SunLink?</p> <p>17 A. Well --</p> <p>18 Q. Obviously prior to this.</p> <p>19 MR. MURPHY: I am going to reference the</p> <p>20 CVEC jobs/Dennis jobs are the ones at issue in</p> <p>21 this case, Mr. Arbitrator, and subject to the</p> <p>22 nine contracts.</p> <p>23 BY MR. MURPHY:</p> <p>24 Q. This is sort of prior to CVEC and so forth?</p>	<p style="text-align: center;">37</p> <p>1 A. We had, I think, a good relationship with ACE</p> <p>2 and worked generally well.</p> <p>3 Q. Okay.</p> <p>4 A. The only exception is that they were notoriously</p> <p>5 bad at paying us on time.</p> <p>6 Q. Okay. And had you ever had any major lawsuits</p> <p>7 or issues about your product that you supplied</p> <p>8 or whether it meet the needs and so forth or</p> <p>9 whether you had fulfilled your supply contracts</p> <p>10 with ACE?</p> <p>11 A. No.</p> <p>12 Q. But you had some difficulties over time you said</p> <p>13 getting paid. Had you ever had to lien</p> <p>14 projects?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And other than what I would describe as</p> <p>17 sort of project-related sort of discourse, was</p> <p>18 there ever any major claims that SunLink had</p> <p>19 failed to supply their products on a timely</p> <p>20 basis for ACE?</p> <p>21 A. No.</p> <p>22 Q. As the CEO of the SunLink organization, did you</p> <p>23 have final responsibility for sign off or</p> <p>24 approval with respect to sales contracts?</p>

<p style="text-align: center;">38</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And did you typically review those sales</p> <p>3 contracts before they were executed by the</p> <p>4 company, by someone on behalf of the company?</p> <p>5 A. Yes. Yes. The general rule, if it is a</p> <p>6 completely standard contract, in other words, no</p> <p>7 change from our typical contract, I would allow</p> <p>8 typically my head of sales to sign those without</p> <p>9 my review if they were the standard. If there</p> <p>10 were any changes, it had to be bubbled up, so.</p> <p>11 Q. All right. Did SunLink under your direction,</p> <p>12 Mr. Tilley, did SunLink develop a set of</p> <p>13 standard terms and conditions for its contracts</p> <p>14 and supply contracts?</p> <p>15 A. Yes.</p> <p>16 Q. And were you personally involved in that</p> <p>17 process?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And did you in effect standardize its</p> <p>20 terms and conditions for SunLink's sales and</p> <p>21 sales contracts?</p> <p>22 A. Yes.</p> <p>23 Q. I would like to sort of have you lead us into</p> <p>24 the CVEC jobs. Do you recall first discussing</p>	<p style="text-align: center;">39</p> <p>1 these jobs, which are the nine jobs which are,</p> <p>2 or at least some of the nine jobs, which are the</p> <p>3 subject of this particular proceeding with ACE,</p> <p>4 do you have a memory of when that sort of</p> <p>5 conversation began?</p> <p>6 A. Yes. It goes back quite a ways. I believe I</p> <p>7 want to say 2010, 2011.</p> <p>8 Q. Okay.</p> <p>9 A. These were coming for a long time.</p> <p>10 Q. Could you describe what the concept of these</p> <p>11 projects were that ACE was pursuing you,</p> <p>12 SunLink, to supply for?</p> <p>13 A. Yes. These were ballasted ground mount systems</p> <p>14 to go on capped landfill sites.</p> <p>15 Q. When roughly in time did this conversation first</p> <p>16 begin as best you can recall?</p> <p>17 A. You know, originally it would have been between</p> <p>18 my sales team and ACE. So I know that it was a</p> <p>19 good deal prior to 2012. But I am not --</p> <p>20 Q. Sometime prior to even 2012? The contracts in</p> <p>21 this case being October of 2013, just for</p> <p>22 reference.</p> <p>23 A. Oh, yes.</p> <p>24 Q. So well before that?</p>
<p style="text-align: center;">40</p> <p>1 A. Oh, yes. Yes. I am sure we will --</p> <p>2 Q. And were these projects related? Was there some</p> <p>3 relationship to these projects? Were they</p> <p>4 treated as a portfolio? Were they treated</p> <p>5 independently? How were the discussions with</p> <p>6 ACE carried out?</p> <p>7 A. We definitely treated these as portfolio</p> <p>8 projects. We often will do portfolio projects</p> <p>9 to get sort of volume pricing.</p> <p>10 Q. When you say "portfolio projects," what do you</p> <p>11 mean?</p> <p>12 A. A mean a number of projects that are typically</p> <p>13 at different locations but use the same or very,</p> <p>14 very similar equipment for us.</p> <p>15 Q. Okay. All right. And so ACE came to you with a</p> <p>16 portfolio of some number of these projects.</p> <p>17 Were they always talking about the same number</p> <p>18 of projects in these conversations or was that</p> <p>19 shifting?</p> <p>20 A. It definitely shifted over time, my recollection</p> <p>21 of the details early on.</p> <p>22 Q. Was there anything particularly unusual about</p> <p>23 this portfolio of projects that ACE came to you</p> <p>24 with -- I say you, I mean SunLink -- in let's</p>	<p style="text-align: center;">41</p> <p>1 say the 2011 time frame?</p> <p>2 A. Other than that it was on a capped landfill, no.</p> <p>3 Q. Okay. Okay. But the actual -- the technical</p> <p>4 aspects of these projects, did they present any</p> <p>5 particular challenges? Were they particularly</p> <p>6 complex in any way?</p> <p>7 A. No. Not at all.</p> <p>8 Q. All right. What was the --</p> <p>9 A. I should be a little bit careful about that.</p> <p>10 From our perspective, they were very simple.</p> <p>11 Q. Right.</p> <p>12 A. From the point of view of the engineers having</p> <p>13 to determine what is on the land, on the cap,</p> <p>14 they might have been really, really complex.</p> <p>15 That interchange may have been. That is not our</p> <p>16 job to be clear. We have to provide the loads</p> <p>17 and be sure the structures can take it.</p> <p>18 Q. You don't get into soils engineering?</p> <p>19 A. I should be careful. We never get into roof</p> <p>20 engineering. We do from time to time do some</p> <p>21 soils. On this project we certainly weren't</p> <p>22 going to do it because of the capped landfill.</p> <p>23 Q. Your engineering on these projects was -- what</p> <p>24 is the simplest way to describe?</p>

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1 A. We provide the loads, our structures are  
2 adequate to support the loads, and what the  
3 loads were from those ballast blocks, how heavy  
4 the ballast blocks needed to be, and what the  
5 actual aerodynamic loads needed to be on to the  
6 feet in the capped landfill.

7 Q. And does SunLink participate in -- and we will  
8 see it come up in contracts -- the layout of the  
9 arrays, how the thing is laid out on the  
10 landfill?

11 A. We help with that for sure.

12 Q. Could you explain the significance of that to  
13 SunLink?

14 A. There are a number of points that are important  
15 there. The first is just from an engineering  
16 point of view. The layout will affect the loads  
17 depending on there is a sheltering effect just  
18 to give you an idea from wind. To get the  
19 loads, we need the layout to start.

20 The second thing that is even more  
21 critical is that that essentially gives us our  
22 bill of materials. You are not going to know  
23 what components and configurations you need  
24 until you have done your layout. Layouts are

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1 have to agree on layout.

2 Q. And did there come a point in time when a  
3 contract, even before the contracts that are the  
4 subject of this particular arbitration, was  
5 there a contract that actually was reached with  
6 respect to at least some of the projects which  
7 are at issue in this case?

8 A. Yes. There was a master supply agreement that  
9 was signed for I believe nearly all of the  
10 projects. Yes.

11 Q. Would you please turn to what is in your book  
12 one there which we have marked as Exhibit 4?

13 MR. MURPHY: Mr. Arbitrator, just a  
14 point of order here. Mr. Evans, I don't know  
15 how you want us to treat this. Do we move the  
16 admission of these things? Obviously you don't  
17 want to do it seriatim. We have not had,  
18 because we didn't get documents until last night  
19 and never got a comment back, disputed,  
20 undisputed sort of thing from Mr. Dowd and ACE,  
21 you know, effectively telling us what ones they  
22 would object to of these, which ones they  
23 wouldn't.

24 So we provided a list and all of that

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1 fundamental to a contract, fundamental to our  
2 work.

3 Q. Who actually creates the layouts?

4 A. We will create layouts internally, but that is  
5 usually in hand with the customer, saying well,  
6 you know, that doesn't work on the site. Now  
7 move this over here. So they will have an  
8 approved layout, upon which we both are working.

9 Q. Ultimately you don't proceed until you have an  
10 approved layout?

11 A. That's right.

12 ARBITRATOR EVANS: Excuse me. Do you  
13 generally get like a site plan or something?  
14 How do you know the environment in which the  
15 units are going to be built?

16 THE WITNESS: That is exactly right. We  
17 get a site plan from the customer.

18 BY MR. MURPHY:

19 Q. That is dialogue back and forth, finally this  
20 approval on the other end and you have something  
21 you can contract for and with?

22 A. That is right. Our contract references a very  
23 specific layout. We have had enough history  
24 over time to know that that is the key. You

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1 back on the 7th. We didn't have theirs, too. I  
2 want to understand how we are going to proceed  
3 with these. Are these going to be exhibits?  
4 How do you want to proceed.

5 ARBITRATOR EVANS: I was just about to  
6 address that when you got to your first exhibit.  
7 So have you had an opportunity to review in fact  
8 the SunLink exhibits at all?

9 MR. DOWD: No, I have not at all, your  
10 Honor. Of course, in arbitration it is up to  
11 you, not dealing with the rules of evidence, do  
12 we just let everything in and proceed?

13 ARBITRATOR EVANS: Well, the rules of  
14 evidence certainly don't apply. It doesn't mean  
15 that every scrap of paper will necessarily be  
16 appropriate to admit. But the reason why we  
17 have the protocol that we do in the scheduling  
18 order and in the discussions we do, it is much  
19 more efficient if the body of evidence can come  
20 in en masse and that the parties can agree to.  
21 If there are specific exhibits that you don't  
22 agree to, I will have to take that up one at a  
23 time. It is much more efficient to put into  
24 evidence, in fact we have 232 exhibits, to put

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1 those in, and if some of those prove to be  
 2 useless to the proceeding, I won't read them and  
 3 we won't talk about them, and there is no harm.  
 4 It is much more efficient that way.  
 5 If you are telling me that you don't  
 6 know whether within the 232 exhibits there are  
 7 documents that are troubling to you, then I am  
 8 not going to force you to do that now, but I am  
 9 going to ask you to burden your evenings over  
 10 the next couple of days to walk through their  
 11 documents, and I will ask the same of SunLink,  
 12 to identify any exhibits that you have a problem  
 13 with, and I will keep checking back with you on  
 14 how you are doing on that project.  
 15 But I think for purposes of today,  
 16 SunLink is going to be talking about exhibits,  
 17 and unless you say, "I object to the exhibit,"  
 18 those exhibits will be deemed in evidence for  
 19 all purposes.  
 20 MR. DOWD: That's fine. Yes. I will  
 21 work on it when I can. As I said, coming out of  
 22 the surgery and the rest, I would say my  
 23 evenings have been pretty full as is. For quite  
 24 a period of time, we have been putting this

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1 agreement for a series of ballasted ground mount  
 2 projects.  
 3 Q. Just by way of observation, if you would go in  
 4 the tab to like half a dozen pages actually to  
 5 what has been Bates labeled SunLink 113?  
 6 A. Yes.  
 7 Q. Is that your signature appearing on this  
 8 contract on March 9, 2012?  
 9 A. It is.  
 10 Q. That is Mr. Hennessey of ACE? Correct?  
 11 A. That's correct.  
 12 Q. And so this contract was executed in 2012?  
 13 A. Yes.  
 14 Q. Did this contract ever become effective, or take  
 15 effect essentially?  
 16 A. I guess I need to know what you mean by in  
 17 effect. I'm not --  
 18 Q. Okay. Fair enough.  
 19 Did this contract -- ultimately we did  
 20 not construct --  
 21 MR. MURPHY: Strike that.  
 22 BY MR. MURPHY:  
 23 Q. Ultimately we did not supply the projects  
 24 indicated in here pursuant to this particular

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1 together. I will go through in light of what  
 2 you are saying with what we object to and go  
 3 forward.  
 4 ARBITRATOR EVANS: Thank you.  
 5 So I am sorry. We are on Exhibit 4?  
 6 MR. MURPHY: Yes. Yes.  
 7 ARBITRATOR EVANS: And I presume that  
 8 there is no objection to this document?  
 9 MR. DOWD: No objection.  
 10 ARBITRATOR EVANS: All right. So we now  
 11 have one exhibit formally in evidence in this  
 12 proceeding.  
 13 MR. MURPHY: Start with one. We have to  
 14 start with one.  
 15 ARBITRATOR EVANS: Baby steps.  
 16 MR. MURPHY: Okay.  
 17 BY MR. MURPHY:  
 18 Q. Have you had a chance to take a look,  
 19 Mr. Tilley, at what is here as Exhibit 4?  
 20 A. Yes.  
 21 Q. At tab 4?  
 22 A. Yes.  
 23 Q. What is this document, please?  
 24 A. It is a master sales contract and volume pricing

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1 instrument, this agreement? Right?  
 2 A. That's correct.  
 3 Q. And we ultimately have nine different contracts  
 4 that are single contracts as opposed to this one  
 5 contract, correct, with a lot of differences  
 6 that we will point out?  
 7 A. Yes.  
 8 Q. All right. And just looking at this, it looks  
 9 like there is Harwich, Barnstable, Brewster,  
 10 Eastham, Chatham, Tisbury, Mashpee, Dennis and  
 11 Duxbury.  
 12 Just a point of clarification. Those  
 13 are not the exact nine that are at issue in this  
 14 case today? Correct?  
 15 A. That's correct.  
 16 Q. And in fact, Mashpee and Duxbury are not the  
 17 subject of this proceeding? Correct?  
 18 MR. DOWD: I object to that.  
 19 A. That's correct.  
 20 MR. DOWD: Mashpee and Duxbury are very  
 21 much a part of this proceeding with respect to  
 22 this case.  
 23 ARBITRATOR EVANS: He asked a question,  
 24 and the witness answered. You may disagree with

<p style="text-align: center;">50</p> <p>1 the question and the answer, but it is not a</p> <p>2 basis to object.</p> <p>3 MR. MURPHY: We are not seeking any</p> <p>4 recovery on the Mashpee or Duxbury jobs. They</p> <p>5 will be alluded to periodically, I think, in</p> <p>6 this proceeding.</p> <p>7 ARBITRATOR EVANS: Proceed.</p> <p>8 BY MR. MURPHY:</p> <p>9 Q. And is this contract familiar to you, sir?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And when this contract -- and just so we</p> <p>12 are clear, am I correct we are pursuing recovery</p> <p>13 on two other projects not mentioned that get us</p> <p>14 to the nine we have here that are not Mashpee</p> <p>15 and Duxbury, and those would be Nunnepog and</p> <p>16 Katama?</p> <p>17 A. Yes.</p> <p>18 MR MURPHY: Okay. And that would be we</p> <p>19 do have nine we are pursuing recovery here for.</p> <p>20 It is a little confusing. It will become clear.</p> <p>21 BY MR. MURPHY:</p> <p>22 Q. Do you recognize this, sir, as incorporating</p> <p>23 standard terms and conditions effectively of</p> <p>24 SunLink, many standard terms and conditions you</p>	<p style="text-align: center;">51</p> <p>1 helped create for the organization?</p> <p>2 A. Yes. This is basically our standard contract</p> <p>3 with a few modifications.</p> <p>4 Q. Turning to the page "executive summary," were</p> <p>5 there discussions -- was there any schedule or</p> <p>6 time frame discussed in the context of this</p> <p>7 contract?</p> <p>8 A. Yes. I mean I anticipated by reading this first</p> <p>9 thing that they were going to start and we were</p> <p>10 being told estimates ACE will begin installation</p> <p>11 of the project in April of 2012 and finish by</p> <p>12 the end of the calendar year. So that gives me,</p> <p>13 you know, a good idea of what is expected in</p> <p>14 terms of these projects.</p> <p>15 Q. Okay. And that is found in the third paragraph</p> <p>16 on the executive summary?</p> <p>17 A. That's correct.</p> <p>18 Q. And turning to the page, page 109, where it says</p> <p>19 "contract information."</p> <p>20 A. Um-hmm.</p> <p>21 Q. It says "product lead time." Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And can you explain to us, sir, what</p> <p>24 product lead time is --</p>
<p style="text-align: center;">52</p> <p>1 A. Sure.</p> <p>2 Q. -- in this contract?</p> <p>3 A. Sure. I mean it is in general. It is the same</p> <p>4 in all of our projects. It takes a while, once</p> <p>5 we get an order, we don't provide -- we don't</p> <p>6 supply large projects out of inventory. We</p> <p>7 don't have the inventory. I mean that is not</p> <p>8 the way we work.</p> <p>9 So when we are providing a project, we</p> <p>10 have to go out to our manufacturers, and they</p> <p>11 have to -- often they have to buy material.</p> <p>12 They get material from somewhere else, raw sheet</p> <p>13 or tube or something. They need to set up their</p> <p>14 production line to be able to manufacture our</p> <p>15 components. That takes some period of time.</p> <p>16 Four to six weeks is what we are saying in this</p> <p>17 case. That is the lead time.</p> <p>18 Now once they produce that, once they</p> <p>19 have done that, they can start producing the</p> <p>20 product, and we start shipping. That is what</p> <p>21 lead time is.</p> <p>22 Q. And does lead time represent a delivery</p> <p>23 schedule?</p> <p>24 A. No. Well, let me be -- this is -- there is --</p>	<p style="text-align: center;">53</p> <p>1 let me clarify this.</p> <p>2 Q. Okay.</p> <p>3 A. The vast majority of projects that we do are</p> <p>4 projects that would ship in one or two</p> <p>5 truckloads. Right? So the lead time and the</p> <p>6 delivery time are almost identical, right, for</p> <p>7 those projects. Because once our guys are set</p> <p>8 up and they may have produced, they will produce</p> <p>9 for a half day or a day, and then they will ship</p> <p>10 it. So we will ship very close to whatever</p> <p>11 their production.</p> <p>12 Q. Like one truckload of materials or two?</p> <p>13 A. Right.</p> <p>14 For any large project, absolutely not.</p> <p>15 That will be clear through a lot of the stuff</p> <p>16 that is here. It has been clear in our business</p> <p>17 forever that you have a lead time is how long it</p> <p>18 takes you to begin receiving material. That is</p> <p>19 how long it is going to take us to begin</p> <p>20 producing material.</p> <p>21 Then there is a delivery schedule that</p> <p>22 comes after that -- right? -- and the delivery</p> <p>23 schedule is defined separately -- right? -- than</p> <p>24 the lead time.</p>



<p style="text-align: center;">54</p> <p>1 Q. All right.</p> <p>2 A. But sometimes people will say things like, you</p> <p>3 know, the lead time, it is going to arrive at</p> <p>4 that time. That is true for small projects.</p> <p>5 Q. Right. Right. But in this one?</p> <p>6 A. Not for a project this size.</p> <p>7 Q. Not for projects this size?</p> <p>8 A. No.</p> <p>9 Q. And is there a -- we see there is also some</p> <p>10 language here about FOB points. Do you see</p> <p>11 that?</p> <p>12 A. Where?</p> <p>13 Q. 109, just above the "product lead time."</p> <p>14 Now in this particular instance, it was</p> <p>15 FOB locations in Boston -- strike that -- in</p> <p>16 Massachusetts to be set forth later? Right?</p> <p>17 A. Yes.</p> <p>18 Q. Did that change in the ultimate contracts?</p> <p>19 A. Yes. This is where -- we don't typically like</p> <p>20 to do FOB from at the job site. There are a lot</p> <p>21 of potential issues there. FOB is usually set</p> <p>22 for our suppliers or our warehouses is usually</p> <p>23 where it is set.</p> <p>24 Q. All right. And this contract also references</p>	<p style="text-align: center;">55</p> <p>1 where it says you have the various projects</p> <p>2 listed, and under each one has a line that says</p> <p>3 reference photovoltaic module. It says Yingli</p> <p>4 or Yingli Panda 265 or it has different numbers</p> <p>5 associated. Can you explain what that is?</p> <p>6 A. That is a module. The modules are, you know, it</p> <p>7 is important for us. They are typically large</p> <p>8 form modules and smaller form modules. If you</p> <p>9 have a larger one, it is oftentimes a mounting</p> <p>10 structure detail, there is less of it. You get</p> <p>11 a better price per watt. Right? So for each</p> <p>12 module, the mounting holes may be in different</p> <p>13 places, so we might have to adjust our system</p> <p>14 for that. It is very important to know which</p> <p>15 module.</p> <p>16 There is another class all together that</p> <p>17 comes into play later in this, ones that don't</p> <p>18 have frames around them, just glass, and those</p> <p>19 are really pretty rare in the market, it is</p> <p>20 called thin film modules. The modules are</p> <p>21 important. All of the things in this thing are</p> <p>22 important to pricing and delivery.</p> <p>23 Q. Again you don't supply the photovoltaic module?</p> <p>24 A. No.</p>
<p style="text-align: center;">56</p> <p>1 Q. And these were all ballasted projects. It is</p> <p>2 indicated method of hold down looks to be</p> <p>3 ballast? Correct?</p> <p>4 A. Correct.</p> <p>5 Q. And there is a volume price that is negotiated</p> <p>6 at Bates number 113, price per watt?</p> <p>7 A. Yes.</p> <p>8 Q. Is that typically how this pricing is</p> <p>9 accomplished?</p> <p>10 A. Yes. I mean we would prefer to provide a price</p> <p>11 per module, but most of our customers want price</p> <p>12 per watt. It is okay as long as we agree on</p> <p>13 what the module is. That is what we have done.</p> <p>14 We have provided a price per watt.</p> <p>15 Q. Is there any delivery schedule set forth in this</p> <p>16 contract?</p> <p>17 A. No.</p> <p>18 Q. Okay. And what would be SunLink's expectation</p> <p>19 after entering into this contract? We will</p> <p>20 speak more about the contract in terms of where</p> <p>21 the next steps will proceed.</p> <p>22 A. This contract, you know, we had heard from them</p> <p>23 clearly that this is going to start -- you know,</p> <p>24 the estimated start time would be April. And</p>	<p style="text-align: center;">57</p> <p>1 then it would go on. This is March. We would</p> <p>2 expect things -- I would have expected things to</p> <p>3 move reasonably quickly at this point in terms</p> <p>4 of I am not sure where we are on engineering.</p> <p>5 You have to have your engineering and permitting</p> <p>6 done. Then we would have expected, you know, a</p> <p>7 schedule certainly when are they going to want</p> <p>8 to take and deliver this stuff.</p> <p>9 Q. Who would provide the scheduling typically?</p> <p>10 A. It is our customers telling us when they want</p> <p>11 it.</p> <p>12 Q. Telling you --</p> <p>13 A. Yes.</p> <p>14 Q. -- when they want the product?</p> <p>15 A. That's right.</p> <p>16 Q. Again that is not provided for in this contract</p> <p>17 now?</p> <p>18 A. No.</p> <p>19 Q. There is no specific delivery schedule?</p> <p>20 A. No. This is just waiting on POs. I think it is</p> <p>21 a trigger. This contract has a trigger of</p> <p>22 waiting for a PO before anything starts.</p> <p>23 Q. Okay. Typically -- I want to speak to the</p> <p>24 concept of notice to proceed. You are familiar</p>

<p style="text-align: center;">58</p> <p>1 with that term?</p> <p>2 A. Yes.</p> <p>3 Q. How does lead time and notice to proceed work in</p> <p>4 these contracts?</p> <p>5 A. Well, you know, I will go into it. In the</p> <p>6 simple case, it's all the same thing. Right?</p> <p>7 In a really simple case, we will get a deposit.</p> <p>8 We will get a schedule. Notice to proceed are</p> <p>9 all embedded in that with the contract. You get</p> <p>10 the contract and you go.</p> <p>11 Sometimes with larger contracts, for</p> <p>12 larger projects, often sometimes they are trying</p> <p>13 to get it financed. They have the price on the</p> <p>14 racking. There is a time where they need to</p> <p>15 work it. Oftentimes we will set up a contract</p> <p>16 like this so they can put together the plan,</p> <p>17 maybe get things financed.</p> <p>18 And there will be another trigger,</p> <p>19 called a notice to proceed, or there may be</p> <p>20 deposits or different triggers we put in for</p> <p>21 them. Notice to proceed is one where someone</p> <p>22 specifically tells us you need to go forward.</p> <p>23 Q. Lead time would follow notice to proceed?</p> <p>24 A. Yes.</p>	<p style="text-align: center;">59</p> <p>1 Q. And turning here to a couple of your standard</p> <p>2 terms and conditions, looking at that signature</p> <p>3 page again, please, page 113. There is a</p> <p>4 sentence here that indicates at the top:</p> <p>5 "Any deviation from the attached</p> <p>6 layout," et cetera, et cetera, et cetera.</p> <p>7 Do you see the sentence I am referring</p> <p>8 to?</p> <p>9 A. Yes.</p> <p>10 Q. Could you just explain that provision in your</p> <p>11 standard terms?</p> <p>12 A. That is critical. Those are critical. That is</p> <p>13 critical because once we have a layout, we are</p> <p>14 going into production on those components --</p> <p>15 right? -- that is what we are having built. We</p> <p>16 are committing to that to our manufacturing</p> <p>17 suppliers. If you start changing that, the</p> <p>18 engineering is based on those components. If</p> <p>19 you start changing the layout of the components,</p> <p>20 all bets are off to anything related to time or</p> <p>21 price. These contracts are very specific. Our</p> <p>22 contracts are very specific in saying here are</p> <p>23 layouts.</p> <p>24 Q. They say specifically: "Any deviation from the</p>
<p style="text-align: center;">60</p> <p>1 attached" --</p> <p>2 ARBITRATOR EVANS: I am sorry. What</p> <p>3 page are you on? I don't have Bates numbers on</p> <p>4 mine.</p> <p>5 MR. MURPHY: You don't?</p> <p>6 ARBITRATOR EVANS: No.</p> <p>7 MR. MURPHY: I apologize. If you could</p> <p>8 turn in to the page where the signatures are, it</p> <p>9 is about five or six pages in. Maybe a little</p> <p>10 more.</p> <p>11 ARBITRATOR EVANS: I have the signature</p> <p>12 page.</p> <p>13 MR. MURPHY: At the top it talks about</p> <p>14 volume pricing. I was reading from the sentence</p> <p>15 that says "Any deviation" --</p> <p>16 ARBITRATOR EVANS: I have got it.</p> <p>17 MR. MURPHY: -- "from the attached</p> <p>18 layout or any changes."</p> <p>19 BY MR. MURPHY:</p> <p>20 Q. I am going to go over this with the witness --</p> <p>21 "to the above information will result in a</p> <p>22 change in price and/or lead time"?</p> <p>23 A. That's correct.</p> <p>24 Q. Effectively sort of a reset if there is a change</p>	<p style="text-align: center;">61</p> <p>1 in these layouts?</p> <p>2 A. That's correct.</p> <p>3 Q. All right. Just looking at this, so appendix A</p> <p>4 that you executed with ACE here in 2012 also had</p> <p>5 terms and conditions of sales, general terms and</p> <p>6 conditions of sales?</p> <p>7 MR. MURPHY: That is a couple more</p> <p>8 pages, Mr. Arbitrator, down, the next page. It</p> <p>9 starts on the next page, Appendix A.</p> <p>10 BY MR. MURPHY:</p> <p>11 Q. And there are some definitions here. Do you</p> <p>12 recognize these as again general terms and</p> <p>13 conditions of sale at SunLink that you helped --</p> <p>14 A. Yes.</p> <p>15 Q. -- create at SunLink?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. I just want to point out a few of them</p> <p>18 without belaboring it here. We talk about, you</p> <p>19 know, in the definitional section we talk about</p> <p>20 the sales contract. That is defined under 1(i)?</p> <p>21 A. Yes.</p> <p>22 Q. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And that is intended to, you know, involve other</p>

<p style="text-align: center;">62</p> <p>1 things, including schedules mutually agreed upon</p> <p>2 by the parties. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And there is a paragraph with respect to the</p> <p>5 so-called SELA, Structural Engineering Load</p> <p>6 Advisory?</p> <p>7 A. Yes.</p> <p>8 Q. That is defined in 1(l)?</p> <p>9 A. Yes.</p> <p>10 Q. Can you just again briefly tell us what that is?</p> <p>11 A. That is the loads. The SELA is our Structural</p> <p>12 Engineering Load Advisory that I mentioned</p> <p>13 earlier. These are the loads. The SELA is our</p> <p>14 engineering document that says these are the</p> <p>15 loads that go from our structure into whatever</p> <p>16 you are supporting, on to a capped landfill or</p> <p>17 roof or whatever. The SELA picks up proprietary</p> <p>18 wind load data, determines this is what the</p> <p>19 loads are from the wind, and we provide that as</p> <p>20 an engineering document to our customers. That</p> <p>21 is what SELA is.</p> <p>22 ARBITRATOR EVANS: How are the loads</p> <p>23 expressed?</p> <p>24 THE WITNESS: They are expressed however</p>	<p style="text-align: center;">63</p> <p>1 they need them. They will be point loads. If</p> <p>2 it is a surface that is the ballast block, it</p> <p>3 will be obviously whatever the weight is plus</p> <p>4 the maximum load. If it is a -- you could say</p> <p>5 it is another, you know, thousand pounds --</p> <p>6 right? -- a thousand pounds of weight and</p> <p>7 another thousand pounds of down push, which is</p> <p>8 the maximum load that can be expected.</p> <p>9 ARBITRATOR EVANS: Expressed in terms of</p> <p>10 pounds?</p> <p>11 THE WITNESS: A force. It is a load in</p> <p>12 terms of force. Yes.</p> <p>13 ARBITRATOR EVANS: Does that factor in</p> <p>14 the wind speeds?</p> <p>15 THE WITNESS: You take in the wind</p> <p>16 speed. You take the exposure categories, height</p> <p>17 off the ground, you take -- there are a lot of</p> <p>18 different parameters that go into that.</p> <p>19 ARBITRATOR EVANS: The end result is you</p> <p>20 say that this system can support a module array</p> <p>21 of X pounds?</p> <p>22 THE WITNESS: There are two things.</p> <p>23 There are two things. One is, you know, we are</p> <p>24 sort of finding that our system can support</p>
<p style="text-align: center;">64</p> <p>1 whatever loads we are providing. That is</p> <p>2 intrinsically part of this. The important part</p> <p>3 of the SELA is it is saying on the feet of the</p> <p>4 system on a roof or on the feet of the system on</p> <p>5 a landfill, these are the maximum forces that</p> <p>6 you need to account for on the structure below.</p> <p>7 So, you know, if we say it is an array</p> <p>8 that is going to be on the roof and if we say on</p> <p>9 one of those feet it needs to be able to take</p> <p>10 1,200 pounds, the engineer looking at the</p> <p>11 building needs to say can the roof take 1,200</p> <p>12 pounds there. If it can't, we can't permit it,</p> <p>13 it shouldn't be done. If it can, everything is</p> <p>14 fine, and they would stamp calculations that say</p> <p>15 that the roof can handle that. We would</p> <p>16 typically provide calculations that say these</p> <p>17 are what the loads are, so.</p> <p>18 ARBITRATOR EVANS: Thank you.</p> <p>19 BY MR. MURPHY:</p> <p>20 Q. Your revision policy on that same page that we</p> <p>21 just started talking about the SELA down at the</p> <p>22 bottom, paragraph 7, is -- we are not going to</p> <p>23 go through it -- but this obviously references,</p> <p>24 ties back to the SELA report and any revisions</p>	<p style="text-align: center;">65</p> <p>1 to either the layout drawing and/or to the SELA</p> <p>2 report, you know, resulting in changes in the</p> <p>3 contract which may result in among other things</p> <p>4 additional components and cost and time for</p> <p>5 revised layout drawings, et cetera?</p> <p>6 A. Yes.</p> <p>7 Q. And we will come back to the cancellation.</p> <p>8 But paragraph 9 on the next page says</p> <p>9 "schedule"?</p> <p>10 A. Yes.</p> <p>11 Q. And I will just read it. It says:</p> <p>12 "SunLink and purchaser agree that the</p> <p>13 scheduled delivery dates and/or lead times as</p> <p>14 set forth in the proposal are approximate."</p> <p>15 So a couple of questions first. Is the</p> <p>16 proposal that is referenced there in this</p> <p>17 document essentially the first few pages that</p> <p>18 sort of precede the signature?</p> <p>19 A. Yes. That is what it is.</p> <p>20 Q. Obviously we are in the general terms and</p> <p>21 conditions. All of these dates, anything that</p> <p>22 is in provided in there -- and that is where the</p> <p>23 lead times are found, is that correct, that are</p> <p>24 specified?</p>

<p style="text-align: right;">66</p> <p>1 A. Yes.</p> <p>2 Q. Those are all approximate? Correct?</p> <p>3 A. Yes.</p> <p>4 Q. As well as any scheduled delivery dates that may</p> <p>5 or may not be sort of available at the time of</p> <p>6 contract?</p> <p>7 A. That's right.</p> <p>8 Q. Okay. Is that a standard provision in all</p> <p>9 SunLink contracts?</p> <p>10 A. Sure.</p> <p>11 Q. Okay. And it also indicates here, the second</p> <p>12 sentence:</p> <p>13 "Seller shall not proceed with the</p> <p>14 manufacturing of the product until, pursuant to</p> <p>15 each purchase order, purchaser issues seller a</p> <p>16 separate written notice to proceed."</p> <p>17 That is also a general term?</p> <p>18 A. No. It is not actually.</p> <p>19 Q. It is not?</p> <p>20 A. It is not. That is not. Typically we won't</p> <p>21 have a separate PO and a separate notice to</p> <p>22 proceed in our contracts.</p> <p>23 Q. Okay.</p> <p>24 A. This was changed for this --</p>	<p style="text-align: right;">67</p> <p>1 Q. Okay.</p> <p>2 A. -- specifically, right.</p> <p>3 Q. So this envisioned some purchase orders coming</p> <p>4 out and so forth?</p> <p>5 A. Yes.</p> <p>6 Q. The contracts ultimately at play here -- and we</p> <p>7 will get to those shortly, I promise -- do not</p> <p>8 have --</p> <p>9 MR. MURPHY: Strike that.</p> <p>10 BY MR. MURPHY:</p> <p>11 Q. -- do not envision any purchase orders issuing?</p> <p>12 They were all sales contracts? They were in and</p> <p>13 of themselves?</p> <p>14 A. Different provisions, neither of which of these</p> <p>15 are standard standard.</p> <p>16 Q. Is the acceptance provision fairly typical, 13</p> <p>17 here, sir?</p> <p>18 A. Yes.</p> <p>19 Q. In this case, I am not going to read it, but</p> <p>20 effectively after 15 days things are deemed</p> <p>21 unconditionally accepted?</p> <p>22 A. That's correct.</p> <p>23 Q. If they are not rejected and returned?</p> <p>24 A. That's right.</p>
<p style="text-align: right;">68</p> <p>1 Q. And I would like to direct your attention to --</p> <p>2 MR. MURPHY: I am sorry, Mr. Arbitrator.</p> <p>3 BY MR. MURPHY:</p> <p>4 Q. It is a few pages down. I am looking at</p> <p>5 paragraph 25 under "general."</p> <p>6 A. Yes.</p> <p>7 Q. It is on your Bates 119.</p> <p>8 A. Yes.</p> <p>9 Q. These are some, I guess, general general terms.</p> <p>10 They are general terms found within the general</p> <p>11 terms?</p> <p>12 A. Yes.</p> <p>13 Q. And I would like to direct your attention to</p> <p>14 subparagraph 25C.</p> <p>15 A. Okay.</p> <p>16 Q. And that particular provision with force majeure</p> <p>17 and events, transportation delay, causes beyond</p> <p>18 the reasonable control of the seller and so</p> <p>19 forth, and you're not being liable for those</p> <p>20 kinds of things, that is a typical?</p> <p>21 A. That is typically in our contract. Yes. In</p> <p>22 every contract.</p> <p>23 Q. All right. And there is an integration clause</p> <p>24 obviously, 25F, which makes whatever is in this</p>	<p style="text-align: right;">69</p> <p>1 document the complete agreement for purposes of</p> <p>2 the parties contracting? Correct?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. And directing your attention to the next</p> <p>5 page, 25(g), as in George.</p> <p>6 A. All right.</p> <p>7 Q. And this provision provides in the second</p> <p>8 sentence actually, I direct your attention to</p> <p>9 that -- well, first of all, the first sentence</p> <p>10 sort of addresses your cumulative ability under</p> <p>11 the contract not exceeding the total amount of</p> <p>12 these purchase orders.</p> <p>13 A. Yes.</p> <p>14 Q. Then it says:</p> <p>15 "In no event shall a party, its</p> <p>16 affiliates, or its or their suppliers be liable</p> <p>17 to the other party or any third party for any</p> <p>18 special, indirect, incidental, consequential or</p> <p>19 punitive damages, whether arising in contract,</p> <p>20 tort or otherwise, even if advised of the</p> <p>21 possibility of the same."</p> <p>22 Do you see that?</p> <p>23 A. That's correct. Yes.</p> <p>24 Q. Is that, sir, a typical term and condition found</p>

<p style="text-align: center;">70</p> <p>1 in your contracts?</p> <p>2 A. Yes, it is.</p> <p>3 And I will note -- I mean at some point</p> <p>4 we can talk about this -- all of those over time</p> <p>5 -- you know, most of these things we modified at</p> <p>6 one point or another under negotiation with</p> <p>7 customers, but these are our standard terms.</p> <p>8 Q. But the ones I pointed to principally did not</p> <p>9 get modified in this instance when we went to</p> <p>10 the nine contracts ultimately in October?</p> <p>11 Correct?</p> <p>12 A. Absolutely not. You are correct.</p> <p>13 Q. Before we leave this, I want to address some</p> <p>14 things that are not in the this contract. Okay?</p> <p>15 You have already testified, I believe,</p> <p>16 that there are no delivery dates of any kind</p> <p>17 specified in this contract? Correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. Are there any provisions -- we just read</p> <p>20 obviously an exculpatory provision -- but are</p> <p>21 there any provisions which makes SunLink liable</p> <p>22 under any set of circumstances for consequential</p> <p>23 losses or indirect losses or liquidated damage</p> <p>24 figures?</p>	<p style="text-align: center;">71</p> <p>1 A. It is my understanding when based on what I have</p> <p>2 heard from my lawyers that no. That is what</p> <p>3 that clause specifically is to exclude.</p> <p>4 Q. It better not be?</p> <p>5 A. Yes. You are right. I don't know. I am not a</p> <p>6 lawyer. But I will be upset if that is not the</p> <p>7 case.</p> <p>8 Q. Are you familiar with the term "buy American"?</p> <p>9 A. Yes.</p> <p>10 Q. And is there a buy American provision in this</p> <p>11 contract?</p> <p>12 A. Not in this contract.</p> <p>13 Q. What do you mean buy American clauses to be?</p> <p>14 A. So we have put buy American clauses in</p> <p>15 contracts, and we have done work for the Navy</p> <p>16 sites, VA. There are different projects that</p> <p>17 sometimes require a buy American provision. It</p> <p>18 is quite an education process for me. There are</p> <p>19 different buy American provisions. Some allow</p> <p>20 you to buy -- every fastener has to be done.</p> <p>21 Lots of different ones. When we do that, we</p> <p>22 have to source -- we have to agree to whatever</p> <p>23 those terms are.</p> <p>24 There is no -- there is nothing in this</p>
<p style="text-align: center;">72</p> <p>1 agreement that says --</p> <p>2 (Pointing to Exhibit 4.)</p> <p>3 -- everything has to be -- there is no</p> <p>4 -- there is nothing on that.</p> <p>5 Q. Is there anything that says you have to source</p> <p>6 products exclusively domestically?</p> <p>7 A. Absolutely not.</p> <p>8 Q. Are you familiar with the term "pay-if-paid</p> <p>9 provisions"?</p> <p>10 A. Yes. That is a term that, you know, typically</p> <p>11 means that they won't pay us or our customer</p> <p>12 won't pay us until they in fact are paid.</p> <p>13 Q. Are there any pay-if-paid provisions in this</p> <p>14 contract?</p> <p>15 A. Absolutely not. Those are -- at some point we</p> <p>16 will talk about that. That is something that --</p> <p>17 Q. Let's talk about it right now.</p> <p>18 A. That is something that we cannot accept. We</p> <p>19 can't accept on a project -- we can't -- we --</p> <p>20 particularly a project this size. There was a</p> <p>21 lot of dialogue at some point we can talk about.</p> <p>22 I know in my input to the contract formation</p> <p>23 process on this that this was our key issue.</p> <p>24 There is a lot of working capital to put</p>	<p style="text-align: center;">73</p> <p>1 together a project like this, and the terms had</p> <p>2 to be negotiated. A certain number of days, you</p> <p>3 know, from FOB, from the time we can invoice,</p> <p>4 that we need to be paid.</p> <p>5 There can not be a provision, because we</p> <p>6 couldn't finance it. Our bank, working capital</p> <p>7 line, will not finance projects that are pay</p> <p>8 when paid. They said, "No. There has to be a</p> <p>9 date when you are paid."</p> <p>10 For our customers, very, very</p> <p>11 explicitly, it is net 45 or net 60. We can work</p> <p>12 around those. But there is never a provision in</p> <p>13 these contracts, and there is not a provision I</p> <p>14 would accept, I would not sign a contract, that</p> <p>15 provided for we will pay you whenever we get</p> <p>16 paid. That is just not -- that won't work for</p> <p>17 us. It certainly won't work for projects this</p> <p>18 scale.</p> <p>19 Q. You read the integration clause and so forth.</p> <p>20 Does this contract -- and I will ask the same</p> <p>21 question again in October -- does it incorporate</p> <p>22 the provisions of any other contract, for</p> <p>23 instance, one that might be in place between the</p> <p>24 EPC contractor or a general contractor and the</p>

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1 developer/owner of these projects?  
 2 A. No.  
 3 Q. So-called flow down provisions?  
 4 A. No. I have dealt with them when I was an  
 5 integrator. When it was my own, you push it  
 6 down to your suppliers. There are none of those  
 7 in these contracts. I have dealt with them as a  
 8 supplier. Right? I have had people push  
 9 provisions from their contracts. There is none  
 10 of that here.  
 11 Q. So none of the performance here is contingent  
 12 upon the experience of ACE upstream, as it were,  
 13 with the sort of developers of these projects?  
 14 A. That is exactly right.  
 15 Q. All right. So with respect to this project, was  
 16 there ever a schedule that came out that was, a  
 17 delivery schedule, which was ever associated  
 18 with what is articulated in Exhibit 4, this MSA,  
 19 master sales agreement?  
 20 A. No. Not that I know of. No.  
 21 Q. Okay. Do you know if --  
 22 MR. MURPHY: Strike that.  
 23 BY MR. MURPHY:  
 24 Q. Just turning to tab 6, sir, Exhibit 6, just two

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1 can't testify as to what Mr. Eastwood had in his  
 2 head.  
 3 ARBITRATOR EVANS: Overruled.  
 4 BY MR. MURPHY:  
 5 Q. You can answer.  
 6 A. So yes. I mean we -- we -- it is not that  
 7 complex. If we are going to produce something  
 8 for a customer in a certain time period, we have  
 9 to know to tell our manufacturers you need to  
 10 produce it in this time period -- right? -- so.  
 11 Q. Those suppliers, what do they need to go into  
 12 production?  
 13 A. It depends on the supplier and the component.  
 14 They require a bill of materials. They may need  
 15 to build some sort of tooling of forms. It  
 16 depends what it is, but.  
 17 Q. Your ballast suppliers, what do they need to do?  
 18 A. Typically need to build forms.  
 19 Q. Concrete forms?  
 20 A. Concrete forms to pour the concrete in. There  
 21 is some hardware they will need to be able to  
 22 lift islets to connect things. I don't know  
 23 enough about the concrete business, but I am  
 24 sure they probably have to make sure they can

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1 documents down.  
 2 (Witness complying.)  
 3 Q. This appears to be an e-mail from Mr. Eastwood  
 4 to Mr. McLean right here?  
 5 A. Yes.  
 6 Q. March 23, 2012. Could you just look at that for  
 7 a second, please?  
 8 A. I am sorry. I must be on the wrong one.  
 9 Q. Look at 6, please. Skip over one and go to 6,  
 10 please.  
 11 A. All right. I am at 7. I apologize.  
 12 Q. Right out of the gate.  
 13 A. I am good. I am good. I am looking at 6.  
 14 Q. My simple question is going to be what  
 15 Mr. Eastwood is trying to do here to get a more  
 16 definitive schedule, information concerning  
 17 deliveries, is that the typical process  
 18 following these contracts where you have to  
 19 pursue schedules from the parties who should be  
 20 generating these schedules, the EPC  
 21 contractor/GC?  
 22 A. Yes.  
 23 MR. DOWD: I object as to what  
 24 Mr. Eastwood has to say. It is said here. He

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1 get the right additives for the concrete as to  
 2 how it is specified, so.  
 3 Q. Is the schedule development important to the  
 4 suppliers?  
 5 A. It is critical.  
 6 Q. Can you explain that a little more?  
 7 A. It depends. I guess I should be careful about  
 8 that. If it is a real small job, it is probably  
 9 not as big of a deal. But for a large project  
 10 where somebody -- my supplier is making the same  
 11 commitments to some degree. Right? They are  
 12 saying we are going to take three months of our  
 13 own production and dedicate it to this and go  
 14 out to our material guys and order a ton of  
 15 stuff. So they need to know.  
 16 Q. Okay. You testified that to your knowledge we  
 17 never received any scheduling?  
 18 A. No.  
 19 Q. This project, this portfolio of projects, at  
 20 least as they are articulated in the master  
 21 sales agreement did not go forward?  
 22 A. That's correct.  
 23 Q. Can you tell us what happened sort of next in  
 24 this dialogue with ACE over the what eventually

<p style="text-align: right;">78</p> <p>1 became for the most part the CVEC portfolio of</p> <p>2 projects?</p> <p>3 A. You know, we kept hearing that they were in the</p> <p>4 works and they were going to be financed and</p> <p>5 something was going to happen, but we never got</p> <p>6 the follow on things that are required in this</p> <p>7 contract in terms of --</p> <p>8 Q. Okay. This thing never --</p> <p>9 A. It never died. They never said, "No. This is</p> <p>10 not going to happen." They were saying it is</p> <p>11 still looking like it is going to happen. We</p> <p>12 are looking on timing.</p> <p>13 Q. Was the sales team and ACE counterparts,</p> <p>14 obviously there are other projects going on with</p> <p>15 ACE? Correct?</p> <p>16 A. Yes.</p> <p>17 Q. There were touch points there where they were</p> <p>18 talking about sort of keeping this thing alive,</p> <p>19 but it hadn't gone live so to speak and it</p> <p>20 didn't go live?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. Do you recall this coming back into</p> <p>23 focus, these projects, or at least perhaps a</p> <p>24 slightly different iteration of these project,</p>	<p style="text-align: right;">79</p> <p>1 coming into focus in 2013?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And now I will --</p> <p>4 MR. MURPHY: Strike that.</p> <p>5 BY MR. MURPHY:</p> <p>6 Q. Do you know if in the spring of 2013, do you</p> <p>7 recall in the spring of 2013 there being</p> <p>8 discussions about a possible different or new</p> <p>9 solar panel being utilized on maybe half of --</p> <p>10 as much as half of these projects?</p> <p>11 A. Yes.</p> <p>12 Q. Could you just explain what happened and what</p> <p>13 occurred in the spring of 2013?</p> <p>14 A. Yes. So, you know, there was no longer the</p> <p>15 Yingli ones we had talked about. They had moved</p> <p>16 -- if it moves to another framed module, it is</p> <p>17 not really --</p> <p>18 Q. You say "moved." In terms of what they were</p> <p>19 specifying?</p> <p>20 A. Yes. It is not that big of a deal, but I think</p> <p>21 they recognized and everyone recognized if you</p> <p>22 moved to a module that doesn't have A-frame,</p> <p>23 particularly a new module, it would have great</p> <p>24 difficulty and may or may not work with the</p>
<p style="text-align: right;">80</p> <p>1 mounting system.</p> <p>2 They came to us, I believe they said at</p> <p>3 this time, I may be wrong, and I certainly found</p> <p>4 out later, that one of the financiers they were</p> <p>5 working with wanted them to use these modules.</p> <p>6 They wanted to make sure that our system could</p> <p>7 support those modules on these projects.</p> <p>8 Q. So ACE came to you with a request to coordinate</p> <p>9 with them in offering a different or a newer</p> <p>10 solar panel on some of these projects?</p> <p>11 A. That's correct.</p> <p>12 Q. Okay. And that happened roughly in the spring</p> <p>13 of 2013-ish?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. I am going to direct your attention here</p> <p>16 to Exhibit 7, please.</p> <p>17 (Witness complying.)</p> <p>18 A. Yes.</p> <p>19 Q. Take a little look at that.</p> <p>20 A. All right.</p> <p>21 Q. Is this the subject area we are talking about in</p> <p>22 terms of this Sunprime, it is called a Sunprime,</p> <p>23 S-u-n-p-r-e-m-e, module that they want to look</p> <p>24 toward this sort of frameless module?</p>	<p style="text-align: right;">81</p> <p>1 A. That's correct.</p> <p>2 Q. And do you know where the Sunprime module is</p> <p>3 manufactured?</p> <p>4 A. You know, I don't.</p> <p>5 Q. Okay. Well, do the spec sheets behind it</p> <p>6 evidence the fact that it is actually sourced,</p> <p>7 it is actually manufactured in China?</p> <p>8 A. That would make sense. Most of the modules are.</p> <p>9 Yingli is in China as well, so.</p> <p>10 Q. Do you understand as you sit here today that the</p> <p>11 Sunprime issue involved a manufactured product</p> <p>12 that you were trying to design against here</p> <p>13 which was manufactured in China?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. And did you have to do anything as a</p> <p>16 company to help ACE with this solution that they</p> <p>17 wanted to employ? Just to be clear here, the</p> <p>18 company manufacturing these new Sunprime modules</p> <p>19 was some sort of portfolio company maybe of the</p> <p>20 lenders that ACE was dealing with on the project</p> <p>21 and they had a desire to utilize these products?</p> <p>22 A. Yes. This is a -- I mean the honest truth is</p> <p>23 anything -- decision around this would likely</p> <p>24 come through me, because there are a lot of</p>

<p style="text-align: center;">82</p> <p>1 little module suppliers. A lot of times there</p> <p>2 are customers that will come to us and say, "Can</p> <p>3 you support this module?" It requires a fair</p> <p>4 amount of effort from us to do. The typical</p> <p>5 answer to that is no.</p> <p>6 Q. Okay.</p> <p>7 A. When you have a customer that you know -- and</p> <p>8 Sunpreme is not a big name. This is something</p> <p>9 that worked that we could do for this module</p> <p>10 that would be a bunch of resources sunk into it</p> <p>11 and not bear any profit for us. We are</p> <p>12 investing in this because we believe these</p> <p>13 projects may still be good and we want them to</p> <p>14 work. We actually worked with Sunpreme to help</p> <p>15 get it to work.</p> <p>16 Q. Very briefly, what did you have to do to</p> <p>17 accommodate ACE's request?</p> <p>18 A. We have other systems that are similar, similar</p> <p>19 enough. We had to contact Sunpreme as I recall,</p> <p>20 test them to make sure that we knew what they</p> <p>21 required, and had to mock things up, had to</p> <p>22 create prototypes. We probably did some load</p> <p>23 testing on one, our structure, to make sure that</p> <p>24 the module didn't crack or there weren't issues</p>	<p style="text-align: center;">83</p> <p>1 with it. There is a design effort for a module</p> <p>2 that is different. This is definitely a</p> <p>3 different module.</p> <p>4 Q. Okay. We went ahead with that, you know,</p> <p>5 revising, sort of revving up, sort of versioning</p> <p>6 up our system to accommodate the Sunpreme issue?</p> <p>7 Right?</p> <p>8 A. Yes.</p> <p>9 Q. After that, you were in the process of that mid</p> <p>10 sort of 2013. Do you recall what happened next</p> <p>11 in this dialogue? Do you ultimately in fact</p> <p>12 create new versions, if you will, of some of</p> <p>13 these products that you supplied to accommodate</p> <p>14 Sunpreme?</p> <p>15 A. Yes, we do.</p> <p>16 Q. Did the projects actually go live in early 2013?</p> <p>17 A. No.</p> <p>18 Q. What happened, sir, as best you can?</p> <p>19 A. Well, nothing happened until, you know, I think</p> <p>20 they were still trying to get them financed --</p> <p>21 right? -- so.</p> <p>22 Q. All right.</p> <p>23 A. So, you know --</p> <p>24 Q. Directing your attention to Exhibit 8 in your</p>
<p style="text-align: center;">84</p> <p>1 binder, please.</p> <p>2 (Witness complying.)</p> <p>3 Q. And I would like you to look at the attachment</p> <p>4 to Exhibit 8 as well, which is the blue slip</p> <p>5 sheet.</p> <p>6 A. All right.</p> <p>7 Q. Do you recall this correspondence?</p> <p>8 A. Yes, I do.</p> <p>9 Q. And this is a letter from Mr. Dowd, June 6,</p> <p>10 2013, addressed To Whom It May Concern?</p> <p>11 A. That's correct.</p> <p>12 Q. What is your understanding surrounding this</p> <p>13 particular correspondence?</p> <p>14 A. ACE is having cash flow issues, and they have</p> <p>15 laid off some people, and my interpretation is</p> <p>16 that the purported cause of it is these projects</p> <p>17 they have been trying to develop, these landfill</p> <p>18 projects.</p> <p>19 Q. Did you know who Mr. Dowd was at that time?</p> <p>20 A. Yes. I had -- you know, he has been with ACE</p> <p>21 for a while. I had met him at conferences, out</p> <p>22 for dinner, you know, one of our conferences. I</p> <p>23 recognized him as being part of the ACE team.</p> <p>24 Q. Okay. Was Mr. Dowd part of the ACE team</p>	<p style="text-align: center;">85</p> <p>1 throughout sort of effectively this -- all the</p> <p>2 events we are going to talk about here at this</p> <p>3 arbitration?</p> <p>4 A. Yes. I think you will see he is on almost all</p> <p>5 the e-mails. He is cc'd by them or by us. Yes.</p> <p>6 Q. Mr. Dowd, so he essentially is telling folks</p> <p>7 that there is going to be layoffs at ACE, and</p> <p>8 things are going to come to a stop, these might</p> <p>9 rebound, it might come back. In fact he is</p> <p>10 predicting that they might well come back. Did</p> <p>11 this have an effect on us?</p> <p>12 A. My concern -- and I don't remember the details.</p> <p>13 My initial concern would not have been for the</p> <p>14 projects we are talking about. It would have</p> <p>15 been for other projects we have done with them.</p> <p>16 I am sure as soon as we got this I went to</p> <p>17 accounting asking do we have outstanding</p> <p>18 receivables from ACE. It looks like a problem.</p> <p>19 That is how I would have reacted to this.</p> <p>20 Q. However, he was holding out promise of funding</p> <p>21 and notices to proceed once that funding ever</p> <p>22 materialized or matured?</p> <p>23 A. Yes.</p> <p>24 Q. It is actually described as a crisis at ACE, he</p>



<p style="text-align: right;">86</p> <p>1 says with officers and directors assuming</p> <p>2 additional responsibilities during the crisis.</p> <p>3 Right?</p> <p>4 A. Yes.</p> <p>5 Q. At some point, sir, does ACE in fact rebound and</p> <p>6 these obviously come back?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And do you recall when that occurred?</p> <p>9 A. I remember my recollection is early August was</p> <p>10 the next time that everybody got real excited</p> <p>11 about this, because we had heard that it was</p> <p>12 imminent. Right.</p> <p>13 Q. Approximately how many swings had you had about</p> <p>14 this was imminent or this was going to come, by</p> <p>15 the August of 2013 time frame?</p> <p>16 A. A lot of skepticism in the company and me</p> <p>17 personally about whether these products would</p> <p>18 ever go forward. Right? Not terribly atypical</p> <p>19 in the industry when people are trying to</p> <p>20 finance new projects, because there are a lot of</p> <p>21 pieces to it.</p> <p>22 Q. Sure.</p> <p>23 A. But I was taking everything with a grain of</p> <p>24 salt. We were told many, many times they were</p>	<p style="text-align: right;">87</p> <p>1 imminent.</p> <p>2 Q. Now we have no contract in place in this August</p> <p>3 of 2013 time frame? Correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And the one we signed before has now expired?</p> <p>6 A. Well, yes.</p> <p>7 Q. Actually, there is expiration terms in it?</p> <p>8 A. Yes. That was one of the things in it. But I</p> <p>9 mean that contract was for Yingli module. It</p> <p>10 was different.</p> <p>11 Q. Everything was different?</p> <p>12 A. I don't know if it expired. Probably if they</p> <p>13 had signed it, we probably would have worked</p> <p>14 forward with it, tried to work forward.</p> <p>15 Q. It was ultimately made clear that --</p> <p>16 A. That that is not the contract.</p> <p>17 Q. Did you do anything from an engineering</p> <p>18 standpoint? Is there anything triggered in the</p> <p>19 fall of 2013 that SunLink undertakes?</p> <p>20 A. Yes. The next thing is I'm sure that we have</p> <p>21 done iterations on engineering on this project</p> <p>22 before, but as things change, you change</p> <p>23 modules, you change layouts, I have to redo</p> <p>24 engineering. So, you know, we are at the stage</p>
<p style="text-align: right;">88</p> <p>1 where I think they are asking us in August, as I</p> <p>2 recall in general, we need to get permitting.</p> <p>3 We need to get this done. We need engineering</p> <p>4 from you right away. And it is actually quite a</p> <p>5 big engineering effort to try to turn something</p> <p>6 around this quickly.</p> <p>7 Q. Did you have a series of sort of separate</p> <p>8 agreements to address engineering?</p> <p>9 A. Yes, that is one of the ways that I dealt with</p> <p>10 it. It was a little bit of risk. We said let's</p> <p>11 get an engineering services agreement for the</p> <p>12 engineering. If they can pay that, it is not a</p> <p>13 lot of money, but it will be a little bit of a</p> <p>14 qualifier for me that this thing is looking like</p> <p>15 it --</p> <p>16 Q. Did --</p> <p>17 MR. DOWD: What was the last answer? I</p> <p>18 thought you said something about separate. I</p> <p>19 couldn't quite hear what you said.</p> <p>20 THE WITNESS: What I said is we had an</p> <p>21 engineering services agreement that I think were</p> <p>22 executed to do engineering.</p> <p>23 MR. DOWD: Sorry.</p> <p>24 BY MR. MURPHY:</p>	<p style="text-align: right;">89</p> <p>1 Q. Do we ultimately play a role, did SunLink</p> <p>2 ultimately have a role in assisting in the</p> <p>3 permitting process from the point of providing</p> <p>4 stamped plans?</p> <p>5 A. Yes. That would be under the engineering</p> <p>6 services.</p> <p>7 Q. That is all treated as a separate matter that we</p> <p>8 are not here about? The engineering was</p> <p>9 effectively separate?</p> <p>10 A. It's -- yes. That's correct.</p> <p>11 Q. In the context of --</p> <p>12 MR. MURPHY: Strike that.</p> <p>13 BY MR. MURPHY:</p> <p>14 Q. I would like to direct your attention to Exhibit</p> <p>15 12, please.</p> <p>16 (Witness complying.)</p> <p>17 Q. Just take a moment to look at the attachment and</p> <p>18 obviously the covering e-mail.</p> <p>19 (Pause.)</p> <p>20 Q. Are you familiar -- so the correspondence here</p> <p>21 has a gentleman named Jeff Gadomski from</p> <p>22 American Capital Energy sends Jonathan Eastwood,</p> <p>23 copy to Zac Osgood, another gentleman named Tom</p> <p>24 Gadomski, with a ballast delivery schedule, and</p>

<p style="text-align: center;">90</p> <p>1 he sends that to you on August 1st. So this</p> <p>2 comes from ACE, August 1, 2013? Correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And are you familiar with the schedule?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Is this schedule something which the</p> <p>7 parties invested a fair amount of debate over</p> <p>8 throughout the course of this case?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And in looking at this, sir --</p> <p>11 A. I guess I should say it was referred to over and</p> <p>12 over again. Whether we were debating this</p> <p>13 actual schedule -- the context maybe so. We</p> <p>14 didn't debate the schedule much.</p> <p>15 Q. What do you understand this schedule was and was</p> <p>16 intended to represent?</p> <p>17 A. So this was provided to us in August, and we</p> <p>18 were told to expect these projects to move</p> <p>19 forward as early as the very beginning of</p> <p>20 September -- right? -- that we were going to get</p> <p>21 -- that they were going to move forward.</p> <p>22 And so they were laying out a delivery</p> <p>23 schedule for the ballast on these projects. And</p> <p>24 so we got this schedule, as I understand it, or</p>	<p style="text-align: center;">91</p> <p>1 supply chain looked at it and went to suppliers</p> <p>2 and said, "Can we do it?"</p> <p>3 It is an aggressive schedule. We never</p> <p>4 agreed to this schedule. But it, you know, it</p> <p>5 was also something that was in the realm of we</p> <p>6 thought we could do. Right? It would be</p> <p>7 difficult, but we could do it.</p> <p>8 Q. Okay.</p> <p>9 A. And I had asked when I first looked at the</p> <p>10 schedule, what was the -- when did we expect the</p> <p>11 notice to proceed on this. So, you know, and I</p> <p>12 was told the end of August.</p> <p>13 Q. Okay.</p> <p>14 A. The very, very beginning, which meant for me</p> <p>15 looking at the schedule that we had a pretty</p> <p>16 tight -- a reasonably tight lead time on this.</p> <p>17 It is like a four- or five-week lead time is</p> <p>18 what is being contemplated. We didn't agree to</p> <p>19 it. I don't know that we would have.</p> <p>20 Q. You say the period of time before they were</p> <p>21 calling for deliveries commencing</p> <p>22 September 25th?</p> <p>23 A. That's right. And we couldn't have done that</p> <p>24 unless they had given us an okay really at the</p>
<p style="text-align: center;">92</p> <p>1 end of August or beginning of September, and</p> <p>2 they knew that.</p> <p>3 ARBITRATOR EVANS: The question is, this</p> <p>4 is specifically for ballast? Is that the</p> <p>5 totality of the SunLink project?</p> <p>6 THE WITNESS: No. Ballast is the real</p> <p>7 -- was the real challenge in terms of time. But</p> <p>8 the other components are steel structures and</p> <p>9 rails and the like.</p> <p>10 ARBITRATOR EVANS: Did you understand</p> <p>11 the schedule then to apply to all the products</p> <p>12 that SunLink was to provide?</p> <p>13 THE WITNESS: No. This was clearly just</p> <p>14 talking about ballast.</p> <p>15 ARBITRATOR EVANS: Just the concrete?</p> <p>16 THE WITNESS: That's correct.</p> <p>17 ARBITRATOR EVANS: All right.</p> <p>18 THE WITNESS: You have to have the</p> <p>19 concrete down, though, before you can put down</p> <p>20 the other components, though.</p> <p>21 BY MR. MURPHY:</p> <p>22 Q. This is a ballast-only delivery schedule?</p> <p>23 Right?</p> <p>24 A. Yes, yes.</p>	<p style="text-align: center;">93</p> <p>1 Q. And you understood this to mean that prior to</p> <p>2 this point in time, because you got it on</p> <p>3 August 1st, there was going to be some amount of</p> <p>4 lead time, you felt it was going to be tight,</p> <p>5 but something you could work with. Just to get</p> <p>6 this said here, there is no contract here</p> <p>7 between the parties?</p> <p>8 A. That's correct.</p> <p>9 Q. ACE sends this over to you in terms of what?</p> <p>10 Laying out its expectations in terms of at least</p> <p>11 the delivery schedule?</p> <p>12 A. Yes.</p> <p>13 Q. And now this also, in terms of what we</p> <p>14 ultimately end up doing here, one, two, three,</p> <p>15 four, five, six -- this is seven projects?</p> <p>16 Correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And this calls for delivery on a five day</p> <p>19 a week schedule?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. And ultimately this is going to become an</p> <p>22 issue in our case later when you get told -- we</p> <p>23 get told about four days for the first time in</p> <p>24 January. Right?</p>

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1 A. Yes.  
 2 Q. Do you know if this was an accurate portrayal of  
 3 the different ballasts? It says ballast one,  
 4 ballast two and ballast three here. Do you know  
 5 if there are more ballast types?  
 6 A. There ended up being more ballast types than  
 7 three.  
 8 Q. Do you have to make different forms for  
 9 different ballasts?  
 10 A. That's correct.  
 11 Q. Okay. But this was never agreed to by the  
 12 parties, was it?  
 13 A. No, it wasn't.  
 14 Q. This is what at least ACE had sent along?  
 15 A. This is what we were working on.  
 16 Q. Ballast only, three types. It has the delivery  
 17 commencing September 25 and ending on January 9?  
 18 A. That's correct.  
 19 Q. Okay. So approximately --  
 20 A. After a four-week lead time -- I guess a three-  
 21 or four-week lead time.  
 22 Q. How did you interpret this schedule in terms of  
 23 the ultimate time that was being suggested by  
 24 ACE for SunLink to --

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1 Q. You said the scale of this?  
 2 A. The scale of this.  
 3 Q. Please explain.  
 4 A. This is about 18,000 of these ballast blocks,  
 5 are a couple of tons each. It turns out this is  
 6 about a thousand semi trucks that are fully  
 7 loaded -- right? -- to be delivered.  
 8 This is not an easy logistically and  
 9 transportationwise. This is a very, very, very  
 10 large set of trucks. I mean I don't think there  
 11 has been a project, and we have done projects  
 12 that are larger than that, but I don't think  
 13 there is a project we have run that many trucks.  
 14 A thousand trucks out to the Cape that are fully  
 15 loaded -- right? -- with concrete just for the  
 16 ballast is a big deal. These numbers are not --  
 17 Q. Just roughly how big is one ballast, I mean?  
 18 Half this table? Whatever? I don't know.  
 19 A. Yes. I would say a third of the table.  
 20 Q. Okay.  
 21 A. Yes. A quarter of the table, whatever.  
 22 Q. Okay. And you get upwards of 20 blocks on a  
 23 truck to actually deliver, half the lead time,  
 24 manufactured, poured?

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1 A. Deliver the ballast?  
 2 Q. -- to basically deliver the ballast only on  
 3 these seven projects?  
 4 A. About 20 weeks from the time that we got the  
 5 notice to proceed. So this schedule is about 15  
 6 to 16 weeks of delivery schedule after a lead  
 7 time of 3 to 4 weeks.  
 8 Q. Okay. And did this schedule ever itself ever  
 9 become operative?  
 10 A. No.  
 11 Q. And it was never -- and yet it came at a time  
 12 when we had not executed our contracts?  
 13 Correct?  
 14 A. That's correct.  
 15 Q. Do you know if there was any contemplation in  
 16 this in terms of how many ballasts per day would  
 17 be delivered to sites or things like that, or is  
 18 that a better question for somebody else?  
 19 A. No. I mean other than the fact that they have  
 20 got 100 here. They have got numbers here.  
 21 Q. Okay.  
 22 A. The thing I would point out, at some point, you  
 23 know, this is real important to bear in mind, is  
 24 the scale of this. Right?

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1 A. Yes. They are loading them as much as they can,  
 2 to meet legal requirements and the rest of it.  
 3 Q. Okay. So and this talks about, and you referred  
 4 to, sort of a total here of 17,460 blocks.  
 5 Right?  
 6 A. That's correct.  
 7 Q. Now eventually we contract for not only these  
 8 seven projects but two other ballast projects?  
 9 Correct?  
 10 A. Yes.  
 11 Q. And in fact, and those are Nunnepog and Katama  
 12 --  
 13 MR. MURPHY: Strike that.  
 14 A. No. Those weren't ballast projects.  
 15 BY MR. MURPHY:  
 16 Q. It is -- well, they actually put into the  
 17 schedules --  
 18 A. Yes.  
 19 Q. -- they built into the schedules later -- and we  
 20 will get to those -- supply of ballast not only  
 21 for these seven ballasted projects, but they  
 22 built in ballast for the Mashpee and Duxbury  
 23 project, which is entirely separately contracted  
 24 for? Correct?

<p style="text-align: center;">98</p> <p>1 A. Yes. That's correct.</p> <p>2 Q. And those are ballasted projects, but they</p> <p>3 conflate the delivery of Mashpee/Duxbury with</p> <p>4 these seven so-called CVEC projects? Right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So I just think we might -- can you very</p> <p>7 briefly explain what CVEC is?</p> <p>8 A. So when we refer to, I am probably not the best</p> <p>9 expert. I know the Cape and Vineyard Electrical</p> <p>10 Cooperative.</p> <p>11 Q. You understand it is essentially a cooperative</p> <p>12 on the Cape to buy power?</p> <p>13 A. Yes. There is a complex arrangement between all</p> <p>14 of these guys. We call it that, but it --</p> <p>15 Q. None of our issues here are about how they</p> <p>16 constructed the EPC contracts to effect this.</p> <p>17 ARBITRATOR EVANS: At some point when it</p> <p>18 is convenient for you, we should take a break.</p> <p>19 MR. MURPHY: Fair enough. This is</p> <p>20 actually fine.</p> <p>21 ARBITRATOR EVANS: All right. We will</p> <p>22 resume in 15 minutes.</p> <p>23 MR. MURPHY: Thank you.</p> <p>24 (Recess taken at 11:29 a.m.)</p>	<p style="text-align: center;">99</p> <p>1 (Recess ended at 11:46 a.m.)</p> <p>2 ARBITRATOR EVANS: Are you ready to</p> <p>3 proceed?</p> <p>4 MR. MURPHY: Yes.</p> <p>5 MR. DOWD: Yes, sir.</p> <p>6 BY MR. MURPHY:</p> <p>7 Q. Mr. Tilley?</p> <p>8 MR. MURPHY: Sorry?</p> <p>9 MR. DOWD: I said yes, sir.</p> <p>10 MR. MURPHY: Oh.</p> <p>11 BY MR. MURPHY:</p> <p>12 Q. Mr. Tilley, we left off at I think Exhibit 12.</p> <p>13 We were talking about that schedule.</p> <p>14 Again this schedule never becomes</p> <p>15 operative?</p> <p>16 A. No.</p> <p>17 Q. I think that is what you testified to?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know --</p> <p>20 MR. MURPHY: Strike that.</p> <p>21 BY MR. MURPHY:</p> <p>22 Q. Who was your principal supply chain personnel in</p> <p>23 the company that reported to you?</p> <p>24 A. Ranjan Prasad was the VP of the supply chain.</p>
<p style="text-align: center;">100</p> <p>1 Q. Do you think this is something that Mr. Prasad,</p> <p>2 who is expected to testify here, will be able to</p> <p>3 tell us what the scheduling and supply chain</p> <p>4 people do in terms of interface with the</p> <p>5 down-line precast people to work out feasibility</p> <p>6 and so forth?</p> <p>7 A. Yes.</p> <p>8 Q. I think that is something we can probably do</p> <p>9 better with him.</p> <p>10 During this time frame, were there price</p> <p>11 negotiations being pursued --</p> <p>12 A. Yes.</p> <p>13 Q. -- or efforts being made to negotiate towards</p> <p>14 some sort of contract again?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And in terms of price negotiation, was</p> <p>17 John Eastwood involved in that process?</p> <p>18 A. Yes.</p> <p>19 Q. And ultimately, is there a price that is sort of</p> <p>20 negotiated for this project to at some point get</p> <p>21 going and people to move to sort of definitive</p> <p>22 contracts?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Turning your attention to Exhibit 26,</p>	<p style="text-align: center;">101</p> <p>1 please, in the binder before you.</p> <p>2 (Witness complying.)</p> <p>3 Q. You are copied on this correspondence from</p> <p>4 Mr. Eastwood to Mr. McLean. Do you recall these</p> <p>5 being the sort of culmination of the</p> <p>6 negotiations that were ensuing toward these</p> <p>7 projects coming on line?</p> <p>8 A. Yes.</p> <p>9 Q. And again Mr. Eastwood would have actually been</p> <p>10 the one negotiating the price?</p> <p>11 A. That's correct.</p> <p>12 Q. Okay. And there is reference here to an initial</p> <p>13 payment of \$100,000 which would permit SunLink</p> <p>14 to expedite production of the molds for</p> <p>15 production of concrete ballasts. Do you see</p> <p>16 that?</p> <p>17 A. Yes.</p> <p>18 Q. Could you explain what that is and why that is a</p> <p>19 part of this arrangement?</p> <p>20 A. Yes. The first thing that I will comment on,</p> <p>21 that I can talk to, is that this price is</p> <p>22 substantially -- we are pushed pretty heavily on</p> <p>23 this price compared to the price that was in the</p> <p>24 original MSA. Right?</p>

<p style="text-align: right;">102</p> <p>1 Q. Okay.</p> <p>2 A. There is a lot of pressure being put on to get</p> <p>3 costs down for them. That is one reason there</p> <p>4 are new sets of contracts. The price is</p> <p>5 substantially lower for this than before.</p> <p>6 Q. The price per megawatt?</p> <p>7 A. Per megawatt.</p> <p>8 The 100,000 bucks is if we are going to</p> <p>9 try to ramp up really quickly to get, you know,</p> <p>10 a certain number of molds done and in a certain</p> <p>11 time, we need to pay our suppliers to build</p> <p>12 those forms to do it. We had gone -- I believe</p> <p>13 at this point we had gone to suppliers and found</p> <p>14 out what they would need. That is where the</p> <p>15 \$100,000 comes from.</p> <p>16 Q. Okay. I would like to direct your attention to</p> <p>17 Exhibit 32, please.</p> <p>18 (Witness complying.)</p> <p>19 Q. At some point do you recall before the contracts</p> <p>20 were signed your being made aware of some of the</p> <p>21 negotiation that was transpiring between</p> <p>22 Mr. Osgood and Mr. John Eastwood and others over</p> <p>23 the contracts?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">103</p> <p>1 Q. Okay. And you will see here attached are some</p> <p>2 comments that came back from Mr. -- not too many</p> <p>3 -- comments that came back from Mr. Osgood of</p> <p>4 ACE --</p> <p>5 A. Yes.</p> <p>6 Q. -- with respect to the standard form terms and</p> <p>7 conditions in the sales contract, and attached</p> <p>8 here to number 32, incidentally, is just the</p> <p>9 Dennis contract, which was representative of all</p> <p>10 of the others? Correct?</p> <p>11 A. I believe that that is true.</p> <p>12 Q. Okay. At some point did you go over these few</p> <p>13 comments that Mr. Osgood had?</p> <p>14 A. Yes.</p> <p>15 Q. And did you also end up proposing some</p> <p>16 additional terms of your own as part of this</p> <p>17 negotiation before this culminated in an</p> <p>18 agreement?</p> <p>19 A. Yes. I mean I remember the main focal point for</p> <p>20 me, and actually for my CFO and for the company,</p> <p>21 was around the payment terms. Because again big</p> <p>22 projects, we needed -- we had to finance this,</p> <p>23 use our working capital line. So there are</p> <p>24 other terms in here that we looked at, and they</p>
<p style="text-align: right;">104</p> <p>1 were handled one way or another. The big</p> <p>2 discussion around this time and later internally</p> <p>3 were around cash flow, guarantees, bonds, those</p> <p>4 types of things. We knew ACE had had financial</p> <p>5 trouble a while back. This is a big commitment</p> <p>6 for us, so.</p> <p>7 Q. Just a few months before?</p> <p>8 A. That's right.</p> <p>9 Q. They had effectively laid off their workforce;</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 Q. And they were in the process of ramping up</p> <p>13 themselves; right?</p> <p>14 A. That's right.</p> <p>15 Q. Turning to Exhibit 36, please.</p> <p>16 (Witness complying.)</p> <p>17 Q. This is -- do you recognize these documents to</p> <p>18 be -- I don't know if it is all of them, but a</p> <p>19 number of the contracts that are ultimately</p> <p>20 signed in this case for various projects</p> <p>21 starting with Barnstable on top? And there are</p> <p>22 different slip sheets that go to Brewster and so</p> <p>23 forth.</p> <p>24 A. Yes. I believe so.</p>	<p style="text-align: right;">105</p> <p>1 Q. And this is Mr. Osgood sending back to Jonathan</p> <p>2 Eastwood in the sales group signed versions of</p> <p>3 these?</p> <p>4 A. Yes.</p> <p>5 Q. At least these contracts at this time, October</p> <p>6 18, 2013?</p> <p>7 A. Yes.</p> <p>8 Q. And Mr. Osgood instructs you specifically:</p> <p>9 "Please do not begin the manufacturing</p> <p>10 process for these projects until ACE gives a</p> <p>11 formal notice to proceed."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And did you adhere to that?</p> <p>15 A. Yes. And other things that we wanted to put in</p> <p>16 before we started production as well.</p> <p>17 Q. Let's talk about those other things. Directing</p> <p>18 your attention to the first -- let's just go to</p> <p>19 the Barnstable contract. It comes up first in</p> <p>20 the attachments here.</p> <p>21 On the second page, it says page 2 of 12</p> <p>22 at the bottom?</p> <p>23 A. Yes.</p> <p>24 Q. Directing your attention to "product lead time."</p>

<p style="text-align: right;">106</p> <p>1 Again these are the contracts that we are</p> <p>2 ultimately here on today and ultimately this</p> <p>3 dispute concerns?</p> <p>4 A. Yes.</p> <p>5 ARBITRATOR EVANS: Just to clarify for</p> <p>6 me?</p> <p>7 MR. MURPHY: Yes.</p> <p>8 ARBITRATOR EVANS: All nine projects</p> <p>9 here, the CVEC projects?</p> <p>10 MR. MURPHY: CVEC/Dennis. Dennis was</p> <p>11 the one up to that that didn't join the</p> <p>12 cooperative. They were big enough to have their</p> <p>13 own buying power. CVEC/Dennis are the nine</p> <p>14 projects, and there is Mashpee and Duxbury as</p> <p>15 well, which were listed on the master contract</p> <p>16 originally.</p> <p>17 ARBITRATOR EVANS: They are not part of</p> <p>18 the claim?</p> <p>19 MR. MURPHY: Right.</p> <p>20 MR. DOWD: It is not part of our claim.</p> <p>21 It is part of our offset to their claim.</p> <p>22 ARBITRATOR EVANS: Okay.</p> <p>23 MR. MURPHY: All right.</p> <p>24 BY MR. MURPHY:</p>	<p style="text-align: right;">107</p> <p>1 Q. Directing your attention back to my question,</p> <p>2 which was the product lead time --</p> <p>3 A. Yes.</p> <p>4 Q. -- elements here, was there some -- does this</p> <p>5 pick up some of the changes you were just</p> <p>6 alluding to?</p> <p>7 A. Absolutely.</p> <p>8 Q. Could you explain, please?</p> <p>9 A. Well, I think all of the -- I think if we read</p> <p>10 the sentence, it is pretty clear what we added.</p> <p>11 All specified lead times are from receipt of</p> <p>12 signed sales contract, down payment, notice to</p> <p>13 proceed and proof of payment bond in place at</p> <p>14 100 percent of contract value.</p> <p>15 We wanted the proof of the bond in</p> <p>16 place. We wanted the down payments. We wanted</p> <p>17 a notice to proceed. And we had to have a</p> <p>18 signed sales contract before we were going into</p> <p>19 production on anything.</p> <p>20 Q. And the \$100,000 figure that we talked about a</p> <p>21 little while ago as sort of a payment to get the</p> <p>22 suppliers going, how does that fit into the</p> <p>23 context of this?</p> <p>24 A. Deposit.</p>
<p style="text-align: right;">108</p> <p>1 Q. Okay. So basically there are deposits that were</p> <p>2 spread out over the nine projects that</p> <p>3 effectively took care of that \$100,000 that you</p> <p>4 had to have?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. When you negotiated these contracts,</p> <p>7 immediately after you negotiated them, what did</p> <p>8 you expect to happen in terms of the notices to</p> <p>9 proceed on these projects? In other words, did</p> <p>10 you expect they were all going to come on line</p> <p>11 together? What were your expectations at the</p> <p>12 time you signed these contracts?</p> <p>13 A. Yes, so we signed them, and that is a really</p> <p>14 good sign. So it looks to me like the projects</p> <p>15 are all going to move forward at this point</p> <p>16 pretty quickly, and I think we are being told</p> <p>17 that, to expect this to move. I would have</p> <p>18 expected we would have ended up with a formal</p> <p>19 schedule on it in a couple of weeks and end up</p> <p>20 with deposits in a couple of weeks and ended up</p> <p>21 with the bonds. It sounded like it was all</p> <p>22 going to come together such that we would be</p> <p>23 moving on this a month from now, a month from</p> <p>24 this time.</p>	<p style="text-align: right;">109</p> <p>1 Q. What were your expectations on the receipt of</p> <p>2 the \$100,000 deposit that your precast suppliers</p> <p>3 were requiring to build forms?</p> <p>4 A. I expected that deposit to show up in a week or</p> <p>5 two weeks -- right? -- maybe even quicker. I</p> <p>6 didn't know.</p> <p>7 Q. Did you expect effectively one check?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And is that what in fact ensued here in</p> <p>10 terms of coming up to -- actually before I get</p> <p>11 to that. I will come back to that question.</p> <p>12 A. All right.</p> <p>13 Q. Just to tie off, and just sticking with the</p> <p>14 Barnstable contract which is the first attached</p> <p>15 here, and I am not going to belabor it, because</p> <p>16 we went through it in some detail with the</p> <p>17 master sales agreement, just for the record on</p> <p>18 page 4 of 12.</p> <p>19 (Witness complying.)</p> <p>20 Q. The phrase I directed your attention to earlier</p> <p>21 about "any deviation from the attached layout or</p> <p>22 any changes to above the information will result</p> <p>23 in a change of price and/or lead time," that is</p> <p>24 obviously picked up in these contracts?</p>

<p style="text-align: right;">110</p> <p>1 Correct?</p> <p>2 A. Yes.</p> <p>3 Q. And the --</p> <p>4 A. And I think these contracts have more developed</p> <p>5 layouts. I think we have already done all the</p> <p>6 engineering on them.</p> <p>7 Q. Let's look at page 2. I am actually glad you</p> <p>8 brought up that. It says "array layout</p> <p>9 drawing." It has a specific bunch of numbers</p> <p>10 indicative of a specific layout drawing for the</p> <p>11 Barnstable landfill?</p> <p>12 A. That's correct.</p> <p>13 Q. And so how does that play into this contract?</p> <p>14 A. That is what we are contracting for.</p> <p>15 Q. And if it is anything but that, what happens?</p> <p>16 A. Then it is a change.</p> <p>17 Q. It is a change?</p> <p>18 A. That's right.</p> <p>19 Q. All right.</p> <p>20 A. That is why we have that language. We had had</p> <p>21 enough experience over time to know that is what</p> <p>22 you put in your contract. This is what we're</p> <p>23 going to deliver. If you change it, we can talk</p> <p>24 about it, but.</p>	<p style="text-align: right;">111</p> <p>1 Q. And the concept -- well, on that page the</p> <p>2 concept there is the six-week lead time. Again</p> <p>3 that refers to the lead time you testified to</p> <p>4 earlier? Correct?</p> <p>5 A. Yes. That is correct.</p> <p>6 Q. Which is preliminary obviously to delivery</p> <p>7 schedules?</p> <p>8 A. When we start shipping product.</p> <p>9 Q. Okay.</p> <p>10 A. Six weeks or later if we can. Right?</p> <p>11 Q. Six weeks' lead time is going to be the point</p> <p>12 that you start shipping product to the site?</p> <p>13 A. That's right.</p> <p>14 Q. Again we don't have to go into it, but the</p> <p>15 provision, the standard terms and conditions at</p> <p>16 Exhibit A are substantially similar to the</p> <p>17 master sales agreement? Correct?</p> <p>18 A. Yes.</p> <p>19 Q. And you have the paragraph regarding schedule</p> <p>20 and approximate and scheduled delivery dates</p> <p>21 and/or lead times being approximate.</p> <p>22 You have the acceptance is the same, the</p> <p>23 15-day unconditional acceptance.</p> <p>24 We are going to arbitration now, as</p>
<p style="text-align: right;">112</p> <p>1 opposed to litigation. We have one change.</p> <p>2 And paragraph 21, the general terms</p> <p>3 within the general terms, so to speak?</p> <p>4 A. Yes.</p> <p>5 Q. 21(c), (f) and (g) are identical to the sort of</p> <p>6 provisions we went over a little earlier in that</p> <p>7 area, the ones respectfully with, or I should</p> <p>8 say respectively, the force majeure, for lack of</p> <p>9 a better word, provision, in C, and the</p> <p>10 integration clause is in F, among others, the</p> <p>11 exculpatory provisions in 21G, all the same?</p> <p>12 Correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And all signed off on by ACE? Correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And does this contract, sir, contain any</p> <p>17 delivery schedule of any kind?</p> <p>18 A. It does not.</p> <p>19 Q. Does this contract incorporate any contracts?</p> <p>20 You heard Mr. Dowd in his opening talk about</p> <p>21 contracts and SREC agreements and EPC demands</p> <p>22 and June 1 substantial completion dates. Any of</p> <p>23 that find a home in any of our contracts?</p> <p>24 A. There are no flow down provisions. There are no</p>	<p style="text-align: right;">113</p> <p>1 liquidated damages provisions. There are no buy</p> <p>2 American provisions in this contract.</p> <p>3 ARBITRATOR EVANS: I have not seen --</p> <p>4 and I don't know if it matters -- any versions</p> <p>5 of the contracts that have been signed by both</p> <p>6 parties. I assume there is a separate packet</p> <p>7 with SunLink's signature?</p> <p>8 MR. MURPHY: Yes.</p> <p>9 ARBITRATOR EVANS: Is there an agreement</p> <p>10 between the parties as to what we should deem</p> <p>11 the operative date of execution of these</p> <p>12 contracts? It looks like Mr. Hennessey signed</p> <p>13 on October 17th. I don't know when SunLink</p> <p>14 signed, and I don't know if it matters, so.</p> <p>15 MR. MURPHY: Honestly I'm not sure that</p> <p>16 it does matter, but we do have them. We will</p> <p>17 put them in, the actual dates. I think for the</p> <p>18 most part they were countersigned by Ridgway,</p> <p>19 and the front page of -- the front of every</p> <p>20 contract has an effective date.</p> <p>21 ARBITRATOR EVANS: Yes.</p> <p>22 MR. MURPHY: The signatures came in</p> <p>23 October 17, 18, 19. This one from Mr. Osgood</p> <p>24 came in on the 18th to us. Mr. Ridgway signed</p>

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1 on the 17th -- basically 10-18 I think  
 2 countersigned.  
 3 ARBITRATOR EVANS: By SunLink?  
 4 MR. MURPHY: Correct.  
 5 ARBITRATOR EVANS: So that would be the  
 6 latest operative date?  
 7 MR. MURPHY: Yes. I think that is fair.  
 8 BY MR. MURPHY:  
 9 Q. So we have contracts that are signed?  
 10 A. Yes.  
 11 Q. You are somewhat looking -- SunLink is looking  
 12 forward to moving forward on this?  
 13 A. Yes.  
 14 Q. What transpires after you sign the contracts?  
 15 A. We are expecting delivery schedules. We are  
 16 expecting deposits. We are expecting all of the  
 17 items that need to happen for us to -- we are  
 18 certainly I believe at this point talking to all  
 19 of our suppliers saying, "Look, this is coming.  
 20 Right? Get ready. Try to figure out how we get  
 21 this rolling. We are excited about this. This  
 22 is going to move forward, but we are going to be  
 23 giving you deposits at some time soon and" --  
 24 Q. And schedules?

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1 paid 45 days from the time that we --  
 2 Q. I was remiss. In fact, Appendix B, I believe,  
 3 addresses payment terms? Correct?  
 4 A. That's correct.  
 5 Q. And that is found on page 9 of 12 on the  
 6 contracts, the Barnstable contract that we have  
 7 been looking at? Right?  
 8 A. Yes.  
 9 Q. So the payment terms are -- first of all, could  
 10 you just explain? When in the cycle, what is  
 11 the cycle with respect to when under these  
 12 contracts in a typical situation that SunLink,  
 13 you know, invoices for things, when things are  
 14 due, when things become overdue and sort of the  
 15 cycle of that?  
 16 A. Well, you know, these are --  
 17 Q. When do we bill for what we are doing?  
 18 A. We bill when we ship. FOB, you take that point.  
 19 Q. All right.  
 20 A. And you say okay, when we have shipped from this  
 21 point, we can invoice. Okay? They have 15 days  
 22 from once it arrives at the site to reject one  
 23 way or another. But the invoice date starts  
 24 when we essentially ship. Right? And so terms

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1 A. -- "notices and schedules so you can get things  
 2 going."  
 3 Q. Okay. Moving up in this. At some point do sort  
 4 of the initial deposits and payment bonds for  
 5 these projects come sort of trickling in?  
 6 A. Yes.  
 7 Q. Do they come in at once --  
 8 A. No.  
 9 Q. -- like you had expected?  
 10 A. No.  
 11 Q. Were you ever cut a check for \$100,000 to go pay  
 12 the suppliers you were working with to get them  
 13 to start?  
 14 A. No.  
 15 Q. Okay. Directing your attention to Exhibit 61,  
 16 please. We will jump ahead here.  
 17 A. I have got one comment.  
 18 Q. Sure.  
 19 A. A comment on the contract.  
 20 Q. Yes.  
 21 A. I also want to point out that we got the terms  
 22 that we want in here that are essentially net 45  
 23 days. There is no pay-when-paid provision. And  
 24 there is a commitment here we are going to be

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1 are net 45 from date of invoice. Right? And  
 2 that's fundamentally important.  
 3 Q. The date of invoice follows immediately upon  
 4 shipment?  
 5 A. That's correct.  
 6 Q. And there is a late fee of 1 and a half percent  
 7 per month on any outstanding balance after 45  
 8 days?  
 9 A. That's right.  
 10 The other thing -- and I want to add one  
 11 other thing.  
 12 Q. Does the 45 days begin -- I think you said it.  
 13 The 15 days sort of acceptance period, that  
 14 doesn't create -- that doesn't turn this into 60  
 15 days? Right?  
 16 A. No.  
 17 Q. In other words, that time gets eaten?  
 18 A. Concurrent.  
 19 Q. Concurrent?  
 20 A. Yes.  
 21 Q. I am sorry. You were about to say something. I  
 22 think I cut you off.  
 23 A. Yes. I was going to say as well something that  
 24 is completely absent from this is any other



<p style="text-align: center;">118</p> <p>1 provisions for payment. Right? And I have had</p> <p>2 contracts in the past where they said you need</p> <p>3 to provide me, you know, lien releases from</p> <p>4 this. You need to provide this certification or</p> <p>5 you need to provide that, you know, where --</p> <p>6 Q. One statement --</p> <p>7 A. -- those credentials essentially flow down from</p> <p>8 the EDC contract. Even if it is not pay when</p> <p>9 paid, they may say we need these three things</p> <p>10 before we can pay you.</p> <p>11 These contracts don't have any of that.</p> <p>12 It is when we ship, we invoice you, and you have</p> <p>13 got 45 days to pay. And that was I'm sure very,</p> <p>14 very clear in all the negotiations, because that</p> <p>15 was our key point, and it was signed with based</p> <p>16 on that --</p> <p>17 Q. Premise?</p> <p>18 A. -- premise.</p> <p>19 Q. I want to talk. You brought up FOB. I want to</p> <p>20 just hit that before I move on from this.</p> <p>21 In the context of the MSA agreement you</p> <p>22 looked at earlier, Exhibit 4 --</p> <p>23 A. Yes.</p> <p>24 Q. -- there was the FOB points were the sites in</p>	<p style="text-align: center;">119</p> <p>1 Massachusetts -- okay? -- the actual sites</p> <p>2 themselves. What are the FOB points in the</p> <p>3 contracts that were executed and that are at</p> <p>4 issue in this case?</p> <p>5 A. They are all different places where we would</p> <p>6 have expected to ship our product from.</p> <p>7 Q. From?</p> <p>8 A. From.</p> <p>9 Q. And it says in here, there is a provision under</p> <p>10 "shipping," actually I will read you the</p> <p>11 shipping provision. It is at paragraph 10. It</p> <p>12 is on page 6 of 12 of this document,</p> <p>13 paragraph 10 says:</p> <p>14 "Shipping and handling."</p> <p>15 A. Um-hmm.</p> <p>16 Q. And it says there:</p> <p>17 "All seller products are furnished FOB</p> <p>18 San Leandro, California; Allen, Texas; or</p> <p>19 Carrollton, Texas (or any other location</p> <p>20 designated by seller) and protectively packaged</p> <p>21 and loaded by seller on common carrier trucks</p> <p>22 for unloading at destination by others.</p> <p>23 Shipping and handling is prepaid by seller and</p> <p>24 should be added to purchaser's invoice."</p>
<p style="text-align: center;">120</p> <p>1 Do you see that?</p> <p>2 A. That's correct.</p> <p>3 Q. So typically -- and again we designate what the</p> <p>4 FOB points are? Correct?</p> <p>5 A. Yes.</p> <p>6 Q. And is there any FOB point designated -- we will</p> <p>7 start in this contract -- for site delivery,</p> <p>8 like there was in the MSA agreement?</p> <p>9 A. No. That has been changed. It is not.</p> <p>10 Q. So obviously there are FOB points identified</p> <p>11 under the product information in this particular</p> <p>12 contract, Barnstable, for California, Minnesota</p> <p>13 and Pennsylvania, and there are some FOB --</p> <p>14 obviously we still have the FOB San Leandro and</p> <p>15 the Texas and Carrollton. Basically none of</p> <p>16 these locations -- what this is not is FOB site?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay. And is the -- are the FOB points</p> <p>19 necessarily the place of manufacture of the</p> <p>20 products?</p> <p>21 A. Absolutely not. That is not the concept of FOB.</p> <p>22 Q. What is the concept of FOB? What does that</p> <p>23 mean?</p> <p>24 A. Free on board. That's it.</p>	<p style="text-align: center;">121</p> <p>1 Q. Your responsibility?</p> <p>2 A. Exactly that point. We often manufacture things</p> <p>3 different places. Our fasteners come from</p> <p>4 wherever. We bring them into San Leandro a lot</p> <p>5 of the time to QC or things on them. Then when</p> <p>6 we ship it out to a customer, it is FOB San</p> <p>7 Leandro. At that point here is the product. It</p> <p>8 is not ours. It is yours. We are invoicing you</p> <p>9 for it. We are managing the shipping. But that</p> <p>10 is what it means.</p> <p>11 Q. I think I directed your attention up further in</p> <p>12 the book to Exhibit 61. You jumped back --</p> <p>13 A. Yes.</p> <p>14 Q. -- to the contract?</p> <p>15 A. Yes.</p> <p>16 Q. Does this refresh your memory, sir, of sort of</p> <p>17 receiving some deposit payments on three of the</p> <p>18 projects, Dennis, Barnstable and Brewster, in or</p> <p>19 about, you know, mid December, December 16th?</p> <p>20 A. Yes.</p> <p>21 Q. This is an e-mail from Casey Purcell, the</p> <p>22 gentleman who exited the room not too long ago.</p> <p>23 Casey was your project manager on this job?</p> <p>24 A. That's correct.</p>

<p style="text-align: center;">122</p> <p>1 Q. And Casey indicates here that:</p> <p>2 "ACE let me know that they will be</p> <p>3 sending over a schedule for ballast deliveries</p> <p>4 tomorrow, which I will forward to you."</p> <p>5 And up until this point, we had no</p> <p>6 schedule for these contracts from ACE? Correct?</p> <p>7 A. That is correct. And I remember quite clearly</p> <p>8 that between the time the contract was signed</p> <p>9 and now, I mean I know that I had been asking</p> <p>10 everybody on this project to get a schedule from</p> <p>11 them, and I believe that everybody on my team</p> <p>12 has been asking for a schedule from ACE for this</p> <p>13 project on a -- on a very regular basis.</p> <p>14 Q. Starting with the contracts being signed?</p> <p>15 A. Starting with the contracts being signed.</p> <p>16 Q. Up until this point, had ACE been forthcoming</p> <p>17 with any delivery schedule?</p> <p>18 A. None. Not as far as I know.</p> <p>19 Q. Had ACE promised several times delivery</p> <p>20 schedules?</p> <p>21 A. I know they have. I am not sure of the timing,</p> <p>22 but they certainly. This looks to be a case</p> <p>23 right here. Right?</p> <p>24 Q. At this point had we received payment of the</p>	<p style="text-align: center;">123</p> <p>1 \$100,000 that had been promised by ACE in order</p> <p>2 to engage your precast suppliers in some of</p> <p>3 their work?</p> <p>4 A. No. We don't have the \$100,000 at this point.</p> <p>5 Quite honestly I'm not sure if we have the bonds</p> <p>6 as well at this point or the other stuff,</p> <p>7 although I know my team was working to pull that</p> <p>8 together.</p> <p>9 Q. So the payment bonds were fairly critical in</p> <p>10 this process? Correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. What was the discussion between the</p> <p>13 parties surrounding the payment bond element of</p> <p>14 notice to proceed and its necessity?</p> <p>15 A. We had to have them all in place.</p> <p>16 Q. Okay. And why did you insist on 100 percent</p> <p>17 payment bonds?</p> <p>18 A. Risk of ACE not being able to pay at some point.</p> <p>19 We wanted bonds behind it. I believe we had at</p> <p>20 this point -- I'm not positive -- but I would</p> <p>21 have thought that we would have had discussions</p> <p>22 with our bank about financing this credit. So</p> <p>23 payment bonds would certainly have made that</p> <p>24 more --</p>
<p style="text-align: center;">124</p> <p>1 Q. Okay. Do you know --</p> <p>2 A. Just to -- just to -- just to talk a second</p> <p>3 about that, because I don't want to leave any</p> <p>4 confusion.</p> <p>5 Q. Sure.</p> <p>6 A. We have a working capital line that is a</p> <p>7 receivables line. And so the bank would loan us</p> <p>8 80 percent of eligible receivables. "Eligible"</p> <p>9 was the key. Right? You had to make sure that</p> <p>10 they were going to be willing to accept that</p> <p>11 receivable to finance it.</p> <p>12 So that is why the bonds were important.</p> <p>13 We had to make sure going into a project like</p> <p>14 this that we could execute. We had to make sure</p> <p>15 that the bank was going to be willing to finance</p> <p>16 these, and they were if there were payment bonds</p> <p>17 and the like.</p> <p>18 Q. Is that the concept of factoring receivables?</p> <p>19 A. I wouldn't call it factoring. Factoring has a</p> <p>20 different connotation. It is essentially</p> <p>21 factoring, but slightly different.</p> <p>22 Q. They will lend against those receivables?</p> <p>23 A. That's right.</p> <p>24 Q. Eligible receivables?</p>	<p style="text-align: center;">125</p> <p>1 A. That's right.</p> <p>2 Q. Up to a certain percentage?</p> <p>3 A. That's right.</p> <p>4 Q. That flowed into your cash flow for these</p> <p>5 projects?</p> <p>6 A. That's right.</p> <p>7 Q. And was ACE made aware of that?</p> <p>8 A. Yes.</p> <p>9 Q. Yes. Okay.</p> <p>10 MR. DOWD: I request at this time that</p> <p>11 they produce these loan documents from</p> <p>12 BridgeBank which they filed in the motion to</p> <p>13 compel and which we have never received with</p> <p>14 respect to this arrangement they had with the</p> <p>15 bank and in fact one of the terms and conditions</p> <p>16 as I suspect those loan documents will also show</p> <p>17 that if they are in default, as we put them in</p> <p>18 default, that would be something they should</p> <p>19 have reported to the bank under the loan</p> <p>20 documents, which we never received.</p> <p>21 ARBITRATOR EVANS: I think I already</p> <p>22 addressed your motion and denied it.</p> <p>23 MR. DOWD: But I think you mentioned to</p> <p>24 bring it up during the hearing.</p>

<p style="text-align: center;">126</p> <p>1 ARBITRATOR EVANS: Right.</p> <p>2 BY MR. MURPHY:</p> <p>3 Q. Mr. Tilley, turning to, just as an example,</p> <p>4 would you turn to tab 66 please.</p> <p>5 (Witness complying.)</p> <p>6 Q. You could even hold your thumb in that, and also</p> <p>7 turn -- open to 68, Exhibit 68, as examples of</p> <p>8 things.</p> <p>9 (Witness complying.)</p> <p>10 Q. Again are these documents indicative of your</p> <p>11 direction to your personnel to pursue schedules</p> <p>12 on these jobs?</p> <p>13 (Witness complying.)</p> <p>14 A. Yes.</p> <p>15 Q. And specifically Exhibit 66 is Mr. Osgood. Who</p> <p>16 is Mr. Osgood in this process? Could you tell</p> <p>17 us what you remember?</p> <p>18 A. ACE's point person on sort of field -- on a lot</p> <p>19 of things.</p> <p>20 Q. On field issues?</p> <p>21 A. Yes.</p> <p>22 Q. Ultimately we will get to your issues and</p> <p>23 dealings directly with Mr. McLean.</p> <p>24 A. That's correct.</p>	<p style="text-align: center;">127</p> <p>1 Q. We are going to get into a very extensive back</p> <p>2 and forth between you and Mr. McLean.</p> <p>3 Mr. Osgood was working with Mr. McLean</p> <p>4 on the CVEC projects?</p> <p>5 A. That's correct.</p> <p>6 Q. Mr. Osgood indicates here at the bottom, the</p> <p>7 embedded e-mail on 66:</p> <p>8 "Please begin to work on these projects.</p> <p>9 We will have updated delivery schedules to you</p> <p>10 shortly."</p> <p>11 This is dated December 17.</p> <p>12 And you know, that -- later that day,</p> <p>13 Mr. Purcell follows up:</p> <p>14 "Do you have the updated delivery</p> <p>15 schedule for these projects?"</p> <p>16 We are still at this impasse where we</p> <p>17 are asking for schedules and they are not</p> <p>18 providing them? Is that fair?</p> <p>19 A. Yes.</p> <p>20 Q. How is this impacting what we are trying to</p> <p>21 accomplish at this point?</p> <p>22 A. You know, to get our suppliers rolling, we need</p> <p>23 some idea of a schedule. Right? I mean they</p> <p>24 don't want to go off and build X number of</p>
<p style="text-align: center;">128</p> <p>1 forms, and there is a lot of things they have to</p> <p>2 do, so we need a schedule to be able to deliver</p> <p>3 these projects in any sort of reasonably</p> <p>4 efficient manner.</p> <p>5 Q. On Exhibit 68, there is a chain of e-mails again</p> <p>6 between Mr. Osgood, actually Mr. McLean and</p> <p>7 Mr. Osgood and Mr. Purcell and others in the</p> <p>8 organization, your organization and their</p> <p>9 organization, on the subject of schedules.</p> <p>10 Correct?</p> <p>11 A. Yes.</p> <p>12 Q. And in fact Mr. McLean tells you on the 17th:</p> <p>13 "We need delivery ASAP, so please start</p> <p>14 production. Please do not wait for a schedule."</p> <p>15 And is that consonant with what you were</p> <p>16 directing your people internally?</p> <p>17 A. I am telling them to move as best they can. We</p> <p>18 have to make sure that the contract provisions</p> <p>19 are met. We need the deposits. We need the</p> <p>20 bonds in place. We need the other things.</p> <p>21 Quite honestly, we need a schedule. We have</p> <p>22 been asking for it for months at this point.</p> <p>23 Q. Mr. Purcell in fact responds to Mr. McLean and</p> <p>24 says:</p>	<p style="text-align: center;">129</p> <p>1 "All we are waiting for is a schedule to</p> <p>2 provide a time line to our suppliers."</p> <p>3 Right?</p> <p>4 A. Yes.</p> <p>5 Q. And Mr. Osgood actually promises on the 17th:</p> <p>6 "We will call you tomorrow to go over</p> <p>7 it."</p> <p>8 Right?</p> <p>9 A. Right.</p> <p>10 Q. Did that happen to your knowledge?</p> <p>11 A. Well, we never got a schedule out of it. I can</p> <p>12 say that. I don't know.</p> <p>13 Q. Okay. And at any point in this continuum, did</p> <p>14 ACE ever -- anyone from ACE ever take the</p> <p>15 position with you that why do you need a</p> <p>16 schedule, we have a contract for six weeks'</p> <p>17 delivery of all of these projects?</p> <p>18 A. No.</p> <p>19 Q. Was that ever even uttered by these folks in the</p> <p>20 context of this schedule request and back and</p> <p>21 forth?</p> <p>22 A. No. Not to me.</p> <p>23 Q. Okay.</p> <p>24 A. And I don't believe to anyone else.</p>

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1 Q. I would like to direct your attention to Exhibit  
2 67, please.  
3 (Witness complying.)  
4 Q. We have already had some back and forth here  
5 with Mr. Dowd concerning Duxbury and Mashpee.  
6 Can you explain from sort of superficially what  
7 transpired with respect to Duxbury and Mashpee  
8 and how it plays or doesn't play a role in this  
9 particular circumstance, in this case?  
10 A. Sure. Duxbury and Mashpee were very similar  
11 projects from an equipment perspective. So, you  
12 know, there was an interest in getting sort of  
13 the volume pricing, running the same production  
14 just a bit longer to get Duxbury and Mashpee  
15 done. We could offer a better price based on  
16 that. That is how they got rolled into it.  
17 They had different owners. They were  
18 very different projects. And this was, you  
19 know, you know, kind of an incredible surprise.  
20 And I joked internally, you know, about being  
21 the ACE Christmas miracle. Right? We would get  
22 paid all of these projects up front, which was  
23 very, very rare.  
24 Q. So, in other words, ACE committed to pay up

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1 at the end of the year someone needs to have  
2 invested a certain amount in a project to  
3 qualify for the investment tax credit, and that  
4 had happened maybe one or two times in my  
5 history, and that is why in the past I would  
6 have been paid in full for a project is because  
7 somebody is trying to take advantage of the  
8 investment tax credit that requires a certain  
9 amount of money invested and that is an easy way  
10 to do it.  
11 Q. We are going to come back to this, but were any  
12 of the funds -- you were in fact prepaid on  
13 Duxbury and Mashpee?  
14 A. We were.  
15 Q. In any of those funds -- was there any  
16 discussion about -- I mean did those funds have  
17 any application or utilization or were they ever  
18 intended or could they legally be utilized in  
19 the context of the CVEC projects at issue here?  
20 A. Absolutely not. I mean that is my  
21 interpretation. I wouldn't take money from one  
22 owner's project and use it on another one.  
23 Q. It is an entirely different owner. You got  
24 prepaid on it. It factors back into this case

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1 front the Duxbury and Mashpee projects alone?  
2 All the others, notwithstanding --  
3 A. Yes.  
4 Q. -- you know, the nine at issue in this case  
5 there was no prepayment on?  
6 A. No. That's correct.  
7 Q. So you are saying that Duxbury and Mashpee alone  
8 were paid before year end by ACE?  
9 A. Yes.  
10 Q. Do you have any -- was it ever shared with you  
11 why that was done?  
12 A. No. But I have a good guess.  
13 Q. Okay. Do you understand there are any tax  
14 implications with having to make some payments  
15 by year end?  
16 A. That would be my assumption.  
17 MR. DOWD: Objection. Speculation.  
18 ARBITRATOR EVANS: Sustained.  
19 BY MR. MURPHY:  
20 Q. In any event, you do receive -- had ACE ever in  
21 its history prepaid you on any project?  
22 A. The only time that I have ever been prepaid for  
23 projects other than when we demanded it for  
24 credit reasons -- right? -- were in cases where

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1 because you supply at or about the same time  
2 those projects with a common supplier?  
3 A. That's right.  
4 Q. And does ACE communicate with you and suggest  
5 that these payments, you know, later in this  
6 case, that they were --  
7 MR. MURPHY: Strike that. Strike that.  
8 That's a terrible question. We will come back  
9 to this.  
10 BY MR. MURPHY:  
11 Q. And again Duxbury and Mashpee are not part of  
12 this particular litigation? Correct? We are  
13 not pursuing any claims? Correct?  
14 A. That's right.  
15 Q. I am moving to a separate subject here.  
16 MR. DOWD: While we are looking, sir,  
17 what is your schedule for lunch? Did you say  
18 earlier?  
19 ARBITRATOR EVANS: I think sometime in  
20 the next 30 minutes that is a convenient  
21 breaking point.  
22 MR. DOWD: Sure.  
23 ARBITRATOR EVANS: Is that okay with  
24 you?

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1 MR. MURPHY: Perfect. Perfect.  
 2 BY MR. MURPHY:  
 3 Q. You may want to pull book two in front of you,  
 4 please.  
 5 (Witness complying.)  
 6 Q. I am just going to direct you up to Exhibit 76,  
 7 please. It is just around the end of the year  
 8 of 2013, December 31. It is an e-mail from a  
 9 Joel Stella, S-t-e-l-l-a, of American Capital  
 10 Energy to Jonathan Eastwood and others in both  
 11 organizations.  
 12 Do you see this?  
 13 A. Yes.  
 14 Q. We talked earlier about layout provisions. Were  
 15 there -- and again this is December 31. We are  
 16 under contract on all the jobs. Where do we  
 17 stand NTPwise as of this date, December 31,  
 18 2013?  
 19 A. I'm not sure. I know that we don't have all the  
 20 deposits on the projects. I'm not sure exactly  
 21 where NTP is per se on all of them.  
 22 Q. Okay.  
 23 A. I know we haven't met all the --  
 24 Q. If I suggested that all the deposits finally

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1 put in the wrong" -- these were issues that have  
 2 occurred in the field that have influenced or  
 3 caused a change in the layout?  
 4 A. Yes.  
 5 Q. Right?  
 6 A. Yes.  
 7 Q. And it talks later down three paragraphs down,  
 8 it talks, the third paragraph: "Panel  
 9 assemblies and their associated ballast blocks  
 10 having to be reworked"; correct?  
 11 A. Yes.  
 12 Q. The last full paragraph here on the first page,  
 13 they are talking about the requirement that  
 14 SunLink check all the as-built plans and  
 15 basically make sure these revisions are  
 16 incorporated.  
 17 So this causes you to undertake  
 18 engineering, does it, of plans and back up?  
 19 A. Yes. I would have to look a little closer to  
 20 look at the changes. The changes, of course,  
 21 new engineering can be new components. It can  
 22 be a bunch of things.  
 23 Q. Sort of keep your finger in that. That is the  
 24 Dennis project, one of the nine? Right?

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1 came in January 2nd, 3rd, thereabouts, would  
 2 that refresh your memory?  
 3 A. Yes.  
 4 Q. We had a period -- we had contracts signed back  
 5 in mid October. Now here it is two and a half  
 6 months later. Do you know what was transpiring  
 7 up at ACE's level? You were getting things  
 8 trickling in and so forth. Do you know if they  
 9 were working on financing? Did you have any  
 10 idea why this two-and-a-half-month delay?  
 11 Right?  
 12 A. I have no idea. I am confused as to why we  
 13 don't have a schedule. I don't know what is  
 14 going on.  
 15 Q. At this point in time, were there layout  
 16 revisions experienced on these projects?  
 17 A. Well, that's -- I mean I see this one. This is  
 18 December 31. It is saying there needs to be a  
 19 change to the Dennis project -- right? -- in  
 20 terms of layout.  
 21 Q. It says:  
 22 "The attached ballast placement plan for  
 23 Dennis. Due to an error in the field,"  
 24 et cetera, "ballast prep pads," et cetera, "were

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1 A. Yes.  
 2 Q. If you turn up to 83, tab 83?  
 3 A. Um-hmm.  
 4 (Witness complying.)  
 5 Q. January 6th, there is a revised plan for the  
 6 Barnstable layout; correct?  
 7 A. Yes.  
 8 Q. Apparently in the field, surveying gas vents,  
 9 ACE found out they had to move the location of  
 10 the proposed array? Right?  
 11 A. Yes.  
 12 Q. Does that cause these same engineering sort of  
 13 concerns and issues?  
 14 A. Yes.  
 15 Q. Turn up to 93, please, or 92. I'm sorry.  
 16 (Witness complying.)  
 17 Q. January 13, we have the Brewster project check  
 18 in with monitoring wells were detected that  
 19 again cause a reconfiguration of the arrays?  
 20 Right?  
 21 A. Yes.  
 22 Q. And this is January 13?  
 23 A. Yes.  
 24 Q. These projects have been engineered and

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1 reengineered now by ACE for how long?  
 2 A. (No audible response.)  
 3 Q. Years?  
 4 A. Yes. A long time.  
 5 Q. Then if you turn to 96.  
 6 (Witness complying.)  
 7 Q. We have changes in the layout, the layout needs  
 8 to be modified at Nunnepog, right, and that is  
 9 January 14th?  
 10 A. Yes.  
 11 Q. And then if you look at 98.  
 12 (Witness complying.)  
 13 Q. The Chatham array needs to be revised? We need  
 14 to revise the design of Chatham?  
 15 A. Yes.  
 16 Q. And gas vents are located and borings that  
 17 weren't there and so forth?  
 18 A. Yes.  
 19 Q. Just as examples -- and that is dated January  
 20 15, 2014?  
 21 A. Yes.  
 22 Q. What we just sort of went through fairly  
 23 quickly, is that sort of -- is that what was  
 24 transpiring on all -- I realize some of them may

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1 some of which they didn't come for revisions  
 2 until after they had installed, right,  
 3 differently.  
 4 Q. There were errors in the field. It happens?  
 5 Right?  
 6 A. Yes.  
 7 Q. There were errors in the field that caused the  
 8 layout revisions almost throughout the entire  
 9 course of the project?  
 10 A. Yes.  
 11 Q. I just want to direct your attention to  
 12 Exhibit 78, please.  
 13 (Witness complying.)  
 14 Q. This is just to refresh your recollection. I  
 15 asked you this question earlier. Mr. Purcell is  
 16 indicating on January 2nd:  
 17 "For notice purposes, if nothing else  
 18 internally, that we have not received a schedule  
 19 from ACE," this is January 2nd, "with regards to  
 20 the pending CVEC projects. We have received  
 21 signed contracts and deposits for the nine  
 22 projects and the two LGMS projects. Let's  
 23 discuss next steps tomorrow. Let me know a good  
 24 time to set up a meeting," and so forth.

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1 look smaller than others but was this --  
 2 A. It is terrifying -- right? -- from my  
 3 perspective, because it means that the site prep  
 4 work hasn't necessarily been thoroughly done.  
 5 You don't -- we signed contracts in October with  
 6 a very specific layout and the rest of it. Here  
 7 in January and continuing from December into  
 8 January they are saying, "Oh, we need to make  
 9 changes. The site survey didn't show this or it  
 10 didn't show this."  
 11 So it is a yellow flag for me. It is  
 12 saying, you know, something wasn't -- hasn't  
 13 really been done well on the prep side of this.  
 14 Combined with the idea I am not getting a  
 15 schedule, I am getting a little bit nervous  
 16 about this.  
 17 Q. Were layout revisions requested and generated by  
 18 ACE after mid January and into ensuing months?  
 19 A. Oh, yes. I believe that there were. Yes.  
 20 Certainly other changes. But I'm --  
 21 Q. Do you know if there were layout revisions into  
 22 the mid May time frame?  
 23 A. Yes. I mean there were -- I know that there  
 24 were as-built changes that they came back to us,

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1 How does this document, assuming it  
 2 does, relate to NTP status?  
 3 A. I believe at this point we have everything we  
 4 need for NTP.  
 5 Q. For NTP?  
 6 A. That's right.  
 7 Q. And how did -- and you testified earlier that  
 8 lead time follows NTP?  
 9 A. That's correct.  
 10 Q. Okay. These two -- before we get off that  
 11 document, please, 78, just to clear up the --  
 12 there is a reference to LGMS products?  
 13 A. Yes.  
 14 Q. Okay. Projects I should say.  
 15 What are those?  
 16 A. Those are the Nunnepog and Katama which are not  
 17 ballasted projects. They are actually post  
 18 driven into the ground.  
 19 Q. I think there actually might be an error here.  
 20 There is not -- this 11 combined projects is  
 21 wrong? Right?  
 22 A. Yes. That's right. It must be a typo.  
 23 Q. Okay. But bottom line --  
 24 A. I think. Or maybe there were another two. I

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1 don't --  
 2 Q. The bottom line, not to add confusion here, but  
 3 --  
 4 A. It might have been Mashpee and Duxbury and the  
 5 nine.  
 6 Q. At issue in this arbitration are nine --  
 7 MR. MURPHY: Strike that.  
 8 BY MR. MURPHY:  
 9 Q. -- seven BGMS projects?  
 10 A. Yes.  
 11 Q. And two LGMS projects?  
 12 A. That's correct.  
 13 Q. And the two LGMS projects being Nunnepog and  
 14 Katama? Correct?  
 15 A. I believe so.  
 16 Q. The difference there is ballasts are not used  
 17 but posts are. Can you explain just the post  
 18 briefly?  
 19 A. You just drive a pile, essentially a section of  
 20 steel, a steel post, into the ground a certain  
 21 depth. Then you mount the stuff on top of that.  
 22 Q. Is there a reason why these projects could allow  
 23 for --  
 24 A. They weren't on landfills.

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1 "Here is a schedule. Here is a schedule that we  
 2 -- you know, that we propose," and at least  
 3 hopefully get the ball moving. Because, you  
 4 know, we had been promised schedules for quite a  
 5 long time, you know, tomorrow, and we have never  
 6 received one. Right? So we're really -- now we  
 7 have everything that we're supposed to have to  
 8 get moving, and we are having trouble moving,  
 9 because we don't have a schedule. Right? So  
 10 that's what is going on.  
 11 Q. Okay. Do we in fact -- do you task our folks to  
 12 do just that --  
 13 A. Yes.  
 14 Q. -- to put a schedule out there --  
 15 A. Yes.  
 16 Q. -- and to try to commence the dialogue?  
 17 A. That's what we decided to do. Yes.  
 18 Q. And if you turn to Exhibit 86, please.  
 19 (Witness complying.)  
 20 Q. If you want to take a look at the e-mail and the  
 21 attachment to it. There is a schedule attached  
 22 to 86.  
 23 (Pause.)  
 24 (The witness viewing Exhibit 86.)

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1 Q. They weren't on landfills?  
 2 A. I am sorry to answer your question before you  
 3 asked it, but I think that is what --  
 4 Q. Good. These are the two projects that are not  
 5 landfill projects and didn't require ballast?  
 6 A. That's right.  
 7 Q. Is there any significance to these acronyms?  
 8 What does the "L" mean?  
 9 A. Large ground mount system. Large scale ground  
 10 mount system. For a time we had a smaller scale  
 11 system. And "BGMS" is ballasted ground mount  
 12 system. "GMS" means ground mount system. "RMS"  
 13 products are roof mounts. "GMS" are ground  
 14 mount.  
 15 Q. Did there come a time, Mr. Tilley, when the  
 16 inability of obtaining a schedule from ACE  
 17 caused SunLink to undertake activity in the  
 18 context of a schedule?  
 19 A. Yes. We had an enormous amount of frustration  
 20 at this point in the fact we didn't have a  
 21 schedule from them, and we talked about, you  
 22 know, what to do, and it was, you know,  
 23 determined that maybe the best thing to do was  
 24 to just go ahead and float one out there, say,

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1 MR. DOWD: I am sorry. Are you saying  
 2 86?  
 3 MR. MURPHY: 86.  
 4 MR. DOWD: It has a schedule? Oh, I  
 5 see.  
 6 BY MR. MURPHY:  
 7 Q. Take a little peak at the schedule that is  
 8 attached.  
 9 A. All right.  
 10 Q. And does this appear to be the schedule that was  
 11 put out by Mr. Purcell on behalf of our  
 12 organization on or about January 7, 2014, to  
 13 provide a draft to get this topic to the top of  
 14 mind here?  
 15 A. Yes.  
 16 Q. Okay. And Mr. Purcell indicates that:  
 17 "We'll make every effort to adjust this  
 18 where needed after your review. Let us know  
 19 what you need."  
 20 A. Yes.  
 21 Q. So was this a hard and fast, this is the only  
 22 schedule we ever perform to, or anything like  
 23 that?  
 24 A. No.

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1 Q. Turning to the schedule itself.  
 2 A. All right.  
 3 Q. Mr. Dowd alluded to this in his opening. It  
 4 provides a schedule from roughly January -- the  
 5 week of January 27 to the week of August 4, but  
 6 the vast majority -- and again this is ballast  
 7 and hardware?  
 8 A. Yes.  
 9 Q. Okay. And I will ask you to trust me on the  
 10 numbers. I won't ask you to go through each of  
 11 the little numbers associated with the ballast.  
 12 But does it appear there are like four types of  
 13 ballast on this project?  
 14 A. Yes.  
 15 Q. Okay.  
 16 A. But, you know --  
 17 Q. There is 11, 12, 20, I will represent to you,  
 18 and 9, okay?  
 19 A. It looks like there are five in there.  
 20 Q. Four or five?  
 21 A. A number of different ones.  
 22 Q. A number of different ballasts. Recalling the  
 23 schedule from August 1 we talked about,  
 24 Exhibit 12 that we talked about earlier, that

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1 differences to the schedule that is being put  
 2 out January 27 versus one being put out August 1  
 3 of 2013 that would sort of distinguish this from  
 4 the August contract preschedule that ACE gave  
 5 you?  
 6 A. I am not sure of the question.  
 7 Q. Okay. Did this, as opposed to the August 1  
 8 schedule, was this schedule now impacted by  
 9 winter conditions?  
 10 A. Yes.  
 11 Q. Okay.  
 12 A. By a number of things. Right? I mean it was --  
 13 well, I am sure we will get to it. There was,  
 14 you know -- there is a whole series of issues.  
 15 Q. That are different from the August 1?  
 16 A. Yes.  
 17 Q. The environment when the August 1 schedule was  
 18 put out?  
 19 A. That's right.  
 20 Q. Turning to -- do you recall ACE's response to  
 21 this schedule?  
 22 A. I mean I know that they didn't like it.  
 23 Q. Okay.  
 24 A. But I know we would have expected them to get

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1 only had three types of ballast and it had no  
 2 hardware on it and it had seven projects?  
 3 Correct?  
 4 A. That's correct.  
 5 Q. And now Mashpee and Duxbury pop on to this, and  
 6 Katama and Nunnepog are on here as well which  
 7 are not ballasted projects. We already talked  
 8 about those.  
 9 From Katama and above, Eastham, Tisbury,  
 10 Harwich, Chatham, Brewster, Barnstable, Dennis,  
 11 et cetera, those had been in discussion? Right?  
 12 A. Yes.  
 13 Q. And most of, with the exception of Chatham and  
 14 Harwich, pretty much everything is sort of  
 15 slated to come in ballast and hardwarewise by  
 16 effectively by the week of the 19th,  
 17 thereabouts?  
 18 A. I am sorry?  
 19 ARBITRATOR EVANS: What month?  
 20 MR. MURPHY: May. I apologize.  
 21 A. Yes. Of the Dennis, Barnstable, Brewster, those  
 22 are all by mid May.  
 23 BY MR. MURPHY:  
 24 Q. Right. And were there any other significant

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1 back to us.  
 2 Q. Directing your attention to Exhibit 87.  
 3 (Witness complying.)  
 4 A. All right.  
 5 Q. On January 8, 2014, appears to be Mr. Osgood's  
 6 response to that schedule? Correct?  
 7 A. Yes.  
 8 Q. And Mr. Osgood indicates:  
 9 "Thank you for sending over the material  
 10 schedule. Unfortunately, this schedule does not  
 11 work for ACE at all. All of these projects  
 12 needs to be operational by April."  
 13 He attaches a schedule himself for what  
 14 he thinks needs to happen.  
 15 Had you heard, prior to this e-mail, had  
 16 you ever heard about any projects being  
 17 operational at any point in time?  
 18 A. No. Not by -- not by -- certainly not by May.  
 19 Q. So when Mr. Dowd in his opening talked about  
 20 this constant communication and repeated  
 21 communication of dates and whenever, when things  
 22 were to be made, can you put that in the context  
 23 of this? Was this the first representation of  
 24 when -- of any sort of scheduling?



<p style="text-align: center;">150</p> <p>1 A. Well, it is a hard question for me to answer.  2 Let me explain why. ACE isn't unique in this.  3 Customers oftentimes say, well, we need this, we  4 are going to need it quickly, or we need it  5 tomorrow, we need it yesterday, we need it this  6 time or that time.  7 You know when those are real when they  8 are in the, for me personally, I know absolutely  9 they are real when they are in the contract and  10 somebody is saying, "Okay, you get LDs if you  11 don't."  12 That is what I typically see when people  13 are pushed against schedule.  14 I had heard these projects -- I heard  15 all sorts of different things about these  16 projects. And I look at this one and say  17 operational by April? I have certainly never  18 heard these need to be operational by April.  19 And I don't even think that is what he meant.  20 Right? I think -- it is inconceivable to me  21 that they would have had -- had an operational  22 system by April. You have to have mechanical  23 completion. You have to have interconnection.  24 You have to have a lot of things done. I don't</p>	<p style="text-align: center;">151</p> <p>1 even know that that is what he meant.  2 So I am looking at this and I am saying  3 this is crazy. I don't know where this is  4 coming from.  5 Q. And the schedule itself that is attached, and it  6 is actually several different changes, in a  7 little different format?  8 A. Okay. Yes.  9 Q. But even just starting with the first page, sort  10 of cumulative deliveries and so forth, it is  11 January 8. They are providing you a cumulative  12 ballast received sort of schedule to get 6,400  13 ballasts in the month of January delivered?  14 A. Where is this?  15 Q. If you turn to the first page of the schedule  16 right after the blue sheet. Yes. That one.  17 A. Yes. 6,400 ballasts.  18 Q. They are talking about cumulative by month?  19 A. Yes.  20 Q. On January 8 they sent you a schedule. And this  21 is the first schedule you have received since  22 the August 1, 2013 schedule? Correct?  23 A. That's correct.  24 Q. And we understand that was precontract.</p>
<p style="text-align: center;">152</p> <p>1 And this is January 8, and it is calling  2 for 6,400 ballasts by the end of the month?  3 A. Yes.  4 Q. And do you have any -- so and you haven't --  5 there is no lead time in here. So did you  6 review this at all and did you give it any  7 consideration? Did your team give it any  8 meaningful consideration?  9 A. I am sure they looked at it and said, "Oh, my  10 God. This is absurd." Right?  11 Q. And do you know that this schedule was -- what  12 ACE sought to impress, was there further  13 conversation about this schedule?  14 MR. MURPHY: Strike that.  15 BY MR. MURPHY:  16 Q. Did your people internally react to this  17 schedule?  18 A. I'm not sure what their reaction -- I mean other  19 than the reaction -- I mean just I want to give  20 little bit of context on this so it is clear.  21 I think it was about 20 ballast blocks  22 on a truck. 6,400? Where are we at? You know,  23 320? In the middle of winter starting in  24 whatever? To be delivered? Much less the forms</p>	<p style="text-align: center;">153</p> <p>1 built and the rest of it?  2 Q. Right.  3 A. This is not rational.  4 Q. You received the money to build the forms  5 January 2nd?  6 A. Yes.  7 Q. And that would --  8 A. And the production -- I mean, you know, I would  9 wonder whether all the capacity in Massachusetts  10 for this could have even done this. We are not  11 -- this is a big deal. Right?  12 Q. A lot of concrete?  13 A. Yes. And very, very different than the schedule  14 that was in August. Right?  15 Q. Right. Okay. And what happened -- what happens  16 after this? We have this initial schedule.  17 Obviously we offer one. We, I guess, succeed in  18 getting the dialogue going. We get this back.  19 Do you recall just in a general sense -- I know  20 you are probably not in it day to day. That  21 would be the supply chain people. What sort of  22 happened from your view of things in terms of  23 this schedule situation and the sort of  24 development of it?</p>

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1 A. It is getting -- I mean I am not -- I mean I am  
 2 clearly looking over things and I am reviewing  
 3 things as they pop up, but I am not at this  
 4 point completely freaked out about this or think  
 5 it -- I am confident that John -- that Jonathan  
 6 and Casey, the people that are involved, are  
 7 going to be able to deal with it, and, you know,  
 8 I am definitely keeping my eye on it. It looks  
 9 like a bit of a yellow flag. But, you know, we  
 10 need to come to agreement on the schedule.  
 11 Right? I mean it's -- it is very clear.  
 12 Q. And do you recall in a more general -- and again  
 13 we will come back to it, because you become very  
 14 involved in this shortly.  
 15 A. Yes.  
 16 Q. But sticking with this time frame, just this  
 17 time frame, you were not necessarily blow for  
 18 blow going back and forth on these schedules --  
 19 A. No.  
 20 Q. -- or communicating necessarily with  
 21 Mr. McLean --  
 22 A. No.  
 23 Q. -- yet on this? Right?  
 24 A. No. Not at all.

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1 Q. Okay.  
 2 A. And, you know, that's -- you know, that would be  
 3 very, very consistent, for example, with the  
 4 August schedule that we had had prior to the  
 5 contract.  
 6 Q. Okay. Explain that.  
 7 A. Well, we were talking about 19 or 20 weeks --  
 8 right? -- which is from the time that we got  
 9 NTP. That would be similar to what -- I find  
 10 about this later. One of the questions, I go  
 11 back into, I say what could reasonably -- what  
 12 would they have been reasonably expected. I got  
 13 the August schedule. I said, okay, guys. Even  
 14 though we didn't agree to this and it was a  
 15 challenge, this is what -- I'm not sure whether  
 16 it is here, we have done it prior, but we put  
 17 together a schedule that is roughly.  
 18 Q. This schedule on January 10th pulls in the  
 19 ballast delivery?  
 20 A. That's right.  
 21 Q. The only two jobs that sort of lag behind here  
 22 are Duxbury and Mashpee? Right?  
 23 A. Yes.  
 24 Q. And the CVEC jobs are shown on this one, the

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1 Q. Do you remember at some point -- I just want to  
 2 surface one more schedule then I will move on to  
 3 something else here. We have others that can  
 4 talk to it, and you will talk to it anyway.  
 5 If you look at tab 97, please.  
 6 MR. MURPHY: Sorry. Strike that.  
 7 BY MR. MURPHY:  
 8 Q. 90, nine-zero please.  
 9 (Witness complying.)  
 10 Q. On the 10th, in further response to what was  
 11 received from Mr. Osgood on the schedule you  
 12 just spoke about, which was Exhibit 87, which  
 13 was attached to Exhibit 87, there is a January  
 14 10th schedule. This kind of comes up in later  
 15 communications.  
 16 But could you just walk us through what  
 17 this January 10 schedule sort of attempted to do  
 18 that is attached to this?  
 19 A. So it looks to me like we are bringing it all --  
 20 we brought the delivery of all the ballast under  
 21 the schedule into, you know, the mid May time  
 22 frame, everything being completed on the CVEC  
 23 jobs by the end of April or the very first week  
 24 of May. Right?

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1 last one being Harwich, coming in the week of  
 2 May 5? Right?  
 3 A. That's right.  
 4 Q. Okay. Do you know if this one was accepted or  
 5 reacted to favorably by ACE?  
 6 A. No.  
 7 Q. Okay.  
 8 A. No, it wasn't reacted to favorably.  
 9 Q. Okay. And as it turns out --  
 10 MR. MURPHY: Or strike that.  
 11 BY MR. MURPHY:  
 12 Q. Again from your perspective, mid January into  
 13 February, this back and forth on schedule,  
 14 actually late January you do become pretty  
 15 intimately involved. We will get to that maybe  
 16 right after the lunch break or something.  
 17 A. Okay.  
 18 Q. But just in terms of where we are, it is mid  
 19 January-ish, later January, and are we having  
 20 dialogue, at least more dialogue now, with ACE  
 21 about what their expectations are in terms of  
 22 whatever contracts they have in place?  
 23 A. We are trying to -- we are trying to get a  
 24 solution. We have got a lot -- the e-mails will

<p style="text-align: right;">158</p> <p>1 bear this out. We have a lot of people working</p> <p>2 on this trying to figure out how to --</p> <p>3 Q. When you say a lot of people working on that,</p> <p>4 what does it mean?</p> <p>5 A. It means I have got two or three people in my</p> <p>6 supply chain that are probably spending many,</p> <p>7 many hours a day on this. I have got people on</p> <p>8 my project management team and maybe somebody on</p> <p>9 my sales team that are spending hours on it</p> <p>10 trying to find different solutions, mainly the</p> <p>11 supply chain team, trying to come up with how do</p> <p>12 we make these guys happy. On the sales side,</p> <p>13 and this is borne out through the e-mails, we</p> <p>14 are constantly going saying, "Tell us what you</p> <p>15 need" -- right? -- "that is within the realm of</p> <p>16 the reasonable."</p> <p>17 Q. Again in this particular time frame, the mid</p> <p>18 January time frame, does it ever surface to you,</p> <p>19 surface up to you, that ACE is making the</p> <p>20 demands for I contracted for a six-week delivery</p> <p>21 on all of these jobs, everything completed?</p> <p>22 A. No. That's not -- I don't -- I don't remember</p> <p>23 exactly when that came in, but that is</p> <p>24 certainly --</p>	<p style="text-align: right;">159</p> <p>1 Q. So this conflation of lead time and delivery</p> <p>2 time --</p> <p>3 A. No, no.</p> <p>4 Q. -- that was not being expressed at this point in</p> <p>5 time by ACE?</p> <p>6 A. No.</p> <p>7 Q. All right.</p> <p>8 A. As best I know.</p> <p>9 Q. All right.</p> <p>10 MR. MURPHY: This may be a good time to</p> <p>11 recess.</p> <p>12 ARBITRATOR EVANS: It is 10 of 1. We</p> <p>13 will proceed again at 10 of 2.</p> <p>14 MR. MURPHY: Yes.</p> <p>15 MR. DOWD: Thank you.</p> <p>16 ARBITRATOR EVANS: All right.</p> <p>17 (Luncheon recess taken at 12:50 p.m.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">160</p> <p>1 AFTERNOON SESSION</p> <p>2 1:53 P.M.</p> <p>3 ARBITRATOR EVANS: Mr. Murphy, are you</p> <p>4 ready to proceed?</p> <p>5 MR. MURPHY: Yes, I am.</p> <p>6 ARBITRATOR EVANS: Ready?</p> <p>7 MR. DOWD: Yes.</p> <p>8 BY MR. MURPHY:</p> <p>9 Q. Mr. Tilley, when we broke we were talking about</p> <p>10 the January 10th schedule, Exhibit 90. We will</p> <p>11 go over that a little bit.</p> <p>12 Do you recall a visit that was made to</p> <p>13 San Rafael by Mr. McLean and Mr. Osgood in or</p> <p>14 about the mid January time frame?</p> <p>15 A. Yes.</p> <p>16 Q. Did you participate in the meeting with them?</p> <p>17 A. No.</p> <p>18 Q. Okay. Did you just introduce yourself kind of</p> <p>19 thing?</p> <p>20 A. Yes. I met them I think in the hallway.</p> <p>21 Q. In the hallway?</p> <p>22 A. Yes. And I said hi.</p> <p>23 Q. Do you know who did meet with them at that time?</p> <p>24 A. I'm not sure, but I --</p>	<p style="text-align: right;">161</p> <p>1 Q. All right.</p> <p>2 A. Probably John Eastwood.</p> <p>3 Q. Coming out of that meeting, were there any</p> <p>4 reports made to you concerning the schedule and</p> <p>5 the CVEC projects that came out of this</p> <p>6 particular meeting?</p> <p>7 A. I don't know.</p> <p>8 Q. I will direct you to something in a moment.</p> <p>9 Do you know if there was also</p> <p>10 discussions in the mid January time frame about</p> <p>11 ACE awarding SunLink another project, a project</p> <p>12 in Charlotte, Vermont?</p> <p>13 A. Yes.</p> <p>14 ARBITRATOR EVANS: I am sorry. Where?</p> <p>15 MR. MURPHY: Charlotte, Vermont.</p> <p>16 ARBITRATOR EVANS: Okay.</p> <p>17 BY MR. MURPHY:</p> <p>18 Q. What kind of project was that just roughly,</p> <p>19 generally?</p> <p>20 A. I think it was a similar project.</p> <p>21 Q. A similar project? A ballasted project?</p> <p>22 A. Yes.</p> <p>23 Q. And you were in negotiations -- SunLink was in</p> <p>24 negotiations at the time over the Charlotte,</p>

<p style="text-align: center;">162</p> <p>1 Vermont project when they were out visiting in</p> <p>2 January?</p> <p>3 A. I assume so.</p> <p>4 Q. Okay. Do you recall at some point getting the</p> <p>5 -- we will come back to that.</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 A. I wasn't involved in the details of negotiating</p> <p>9 that. I mean I know it was negotiated at that</p> <p>10 time.</p> <p>11 Q. Okay.</p> <p>12 A. And I know we got the project, and I assume at</p> <p>13 this time.</p> <p>14 Q. Okay.</p> <p>15 A. But I wasn't really a party to a lot of those.</p> <p>16 Q. Okay. I would like to direct your attention,</p> <p>17 please, to Exhibit 100.</p> <p>18 (Witness complying.)</p> <p>19 Q. I would just like you to take a moment to read</p> <p>20 this letter, please, or familiarize yourself</p> <p>21 with it.</p> <p>22 (Pause.)</p> <p>23 (The witness viewing Exhibit 100.)</p> <p>24 A. I -- yes. I remember this. It outlines pretty</p>	<p style="text-align: center;">163</p> <p>1 clearly where we are on everything, so.</p> <p>2 Q. Do you recall this letter sort of being</p> <p>3 circulated in draft in the company and a number</p> <p>4 of folks having input on this particular</p> <p>5 correspondence?</p> <p>6 A. Yes.</p> <p>7 Q. And Mr. Eastwood sent this out on January 17th,</p> <p>8 and he references, quote-unquote, what he calls</p> <p>9 the prevailing schedule. He attaches the</p> <p>10 January 10th schedule which we just saw most</p> <p>11 recently in terms of the schedule exchange.</p> <p>12 A. Yes.</p> <p>13 Q. And he explains it, and he also talks about --</p> <p>14 he also addresses, however, he provides an</p> <p>15 option to provide a more aggressive schedule</p> <p>16 than even the 1-10, the January 10th, schedule</p> <p>17 in this correspondence.</p> <p>18 Do you recall there being discussion</p> <p>19 within SunLink at this time, the senior</p> <p>20 management specifically, about trying to provide</p> <p>21 options to ACE in terms of what they were</p> <p>22 requesting?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And what do you understand -- and there</p>
<p style="text-align: center;">164</p> <p>1 is a schedule attached to -- there are two</p> <p>2 schedules. One is the January 10th one we just</p> <p>3 talked about. The other, the second schedule,</p> <p>4 is the revised schedule that Mr. Eastwood refers</p> <p>5 to. He actually calls it a curtailed schedule,</p> <p>6 January 16th version. Can you just explain?</p> <p>7 This schedule pulls everything into essentially</p> <p>8 the end of March, first week of April?</p> <p>9 A. That's correct.</p> <p>10 Q. Okay. And is it your understanding that --</p> <p>11 MR. MURPHY: Strike that.</p> <p>12 BY MR. MURPHY:</p> <p>13 Q. Was one of the principal purposes behind this</p> <p>14 correspondence to provide this option,</p> <p>15 admittedly at a cost of what was going to be in</p> <p>16 excess of \$400,000 to get this particular</p> <p>17 aggressive delivery schedule?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. And did ACE act on, ever accept, this</p> <p>20 accelerated option provided by Mr. Eastwood and</p> <p>21 SunLink on January 17 --</p> <p>22 A. No.</p> <p>23 Q. -- 2014?</p> <p>24 A. No.</p>	<p style="text-align: center;">165</p> <p>1 Q. And again for that cost, all of the ballast for</p> <p>2 this project with the exception of some in</p> <p>3 Harwich and some on the Duxbury job would have</p> <p>4 all been delivered, so substantially all of the</p> <p>5 ballast, would have been delivered by the end of</p> <p>6 March 2014? Correct?</p> <p>7 A. Yes. And I think this includes more than the</p> <p>8 ballast. I think it includes --</p> <p>9 Q. This includes hardware as well?</p> <p>10 A. Yes.</p> <p>11 ARBITRATOR EVANS: Does this schedule</p> <p>12 then include all of the SunLink product for</p> <p>13 those nine jobs at issue here?</p> <p>14 THE WITNESS: Yes. It is a -- I think</p> <p>15 it also includes -- yes. It includes -- yes.</p> <p>16 BY MR. MURPHY:</p> <p>17 Q. Chris, I am going to have you look at the third</p> <p>18 book, please.</p> <p>19 A. Okay.</p> <p>20 MR. DOWD: The third volume?</p> <p>21 MR. MURPHY: Yes, please.</p> <p>22 BY MR. MURPHY:</p> <p>23 Q. At some point did you -- please turn to tab 105.</p> <p>24 Exhibit 105.</p>

<p style="text-align: right;">166</p> <p>1 (Witness complying.)</p> <p>2 Q. Do you recall ACE -- this response that</p> <p>3 Mr. McLean provided to John Eastwood in response</p> <p>4 to Exhibit 100, which we just had in front of</p> <p>5 you?</p> <p>6 A. Yes.</p> <p>7 Q. And incidentally, Mr. Eastwood, just looking at</p> <p>8 100 real quickly -- I am sorry -- you just</p> <p>9 pulled it out. I just want to turn to it for a</p> <p>10 couple of things.</p> <p>11 (Witness complying.)</p> <p>12 Q. Mr. Eastwood mentions in his January 17th</p> <p>13 letter, obviously in addition to providing the</p> <p>14 options that you testified about, he also talks</p> <p>15 about having logistical concerns and he talks</p> <p>16 about no allowance having been made for</p> <p>17 inclement weather or other unpredictable events</p> <p>18 and also saying that this assumed that ACE would</p> <p>19 have sufficient personnel to offload everything</p> <p>20 that was being requested?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Was there a concern within SunLink</p> <p>23 whether they had the manpower to actually pull</p> <p>24 off what they were suggesting should occur here</p>	<p style="text-align: right;">167</p> <p>1 on this job in terms of what promises they may</p> <p>2 or may not have made to the ownership?</p> <p>3 A. Yes. I mean I certainly was hearing that from</p> <p>4 my team. They were thinking that what they were</p> <p>5 requesting in terms of acceptance of ballast and</p> <p>6 the rest of it wasn't sustainable. I don't</p> <p>7 know, but that was certainly the --</p> <p>8 Q. And were there -- do you recall whether there</p> <p>9 were in fact a number of inclement weather</p> <p>10 events on this project?</p> <p>11 A. Oh, gosh yes. That winter was a very bad</p> <p>12 winter.</p> <p>13 ARBITRATOR EVANS: Compared to this past</p> <p>14 winter?</p> <p>15 MR. MURPHY: It was a light winter as</p> <p>16 compared to this winter. I know, everything is</p> <p>17 in perspective.</p> <p>18 BY MR. MURPHY:</p> <p>19 Q. In any event, turning to Exhibit 105 now.</p> <p>20 (Witness complying.)</p> <p>21 Q. Mr. McLean rejects this effort and does not</p> <p>22 avail himself of the \$400,000 offer? Correct?</p> <p>23 A. I believe that is correct. Yes.</p> <p>24 Q. Okay. And he does say, "With the current</p>
<p style="text-align: right;">168</p> <p>1 schedule I am now faced with" --</p> <p>2 ARBITRATOR EVANS: Can you identify</p> <p>3 which portion of this?</p> <p>4 MR. MURPHY: Yes. I apologize.</p> <p>5 BY MR. MURPHY:</p> <p>6 Q. There is sort of an embedded message, although</p> <p>7 we don't have the data on it. But Mr. Eastwood</p> <p>8 responds to above. That is John Eastwood's</p> <p>9 response.</p> <p>10 Below, do you understand that that is</p> <p>11 Mr. McLean's response? If you follow the e-mail</p> <p>12 string, it actually picks up the 17th behind it.</p> <p>13 Sort of below on the first page, below the</p> <p>14 initial one-liner, that sort of picks up</p> <p>15 Mr. McLean's e-mail? Correct?</p> <p>16 A. That's correct.</p> <p>17 Q. That is in direct response to Exhibit 100 that</p> <p>18 we just looked at.</p> <p>19 And incidentally, Mr. McLean mentions at</p> <p>20 the bottom here. He says:</p> <p>21 "If this is a cash flow issue, which I</p> <p>22 find hard to believe because I sent you almost</p> <p>23 \$1 million in the last four weeks."</p> <p>24 Do you see that?</p>	<p style="text-align: right;">169</p> <p>1 A. Yes.</p> <p>2 Q. Do you know what he is referring to there? Did</p> <p>3 you receive a hundred -- strike that -- a</p> <p>4 million dollars on the CVEC project?</p> <p>5 A. No.</p> <p>6 Q. Do you know what he is referring to?</p> <p>7 A. I assume he is referring to Duxbury and Mashpee.</p> <p>8 Q. So you received nothing beyond deposits at this</p> <p>9 point on the nine projects that are at issue in</p> <p>10 this case?</p> <p>11 A. That's correct.</p> <p>12 Q. And the money you received for Duxbury and</p> <p>13 Mashpee went to the Duxbury and Mashpee efforts?</p> <p>14 A. Yes.</p> <p>15 Q. Correct?</p> <p>16 A. (The witness nodding his head.)</p> <p>17 Q. You have to say yes if you are going to say yes.</p> <p>18 She has to write it.</p> <p>19 A. Yes.</p> <p>20 Q. Mr. McLean also says in the second paragraph, he</p> <p>21 talks about "the start date has changed but</p> <p>22 durations never have." He says:</p> <p>23 "We had discussions very long ago prior</p> <p>24 to any of the delays about the ballast being</p>

<p style="text-align: center;">170</p> <p>1 critical path and expectation of receiving 100</p> <p>2 ballasts per site per day six weeks after NTP."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Is that consistent with our overall expectation</p> <p>6 and understanding of lead time and NTP?</p> <p>7 A. He is saying a six-week lead time on this. Six</p> <p>8 weeks after NTP, we are going to start receiving</p> <p>9 ballast. We are going to receive it -- I don't</p> <p>10 know that we agreed with that amount. But he</p> <p>11 has clearly laid out the framework for lead time</p> <p>12 and production schedule and delivery schedule.</p> <p>13 Q. Okay. He also suggests there may be some</p> <p>14 deceptive practices here under Massachusetts</p> <p>15 General Laws. Was there ever any claim or</p> <p>16 demand made of any kind under Massachusetts</p> <p>17 General Laws? Forget 97A. I think the</p> <p>18 reference is probably to 93A. Was there ever</p> <p>19 any claim of that nature ever exerted?</p> <p>20 A. No.</p> <p>21 Q. Now had any of our -- to your knowledge, had</p> <p>22 anything ever been communicated from SunLink to</p> <p>23 the ACE organization that we would be delivering</p> <p>24 100 ballast blocks per day per site?</p>	<p style="text-align: center;">171</p> <p>1 A. Not that I'm aware of.</p> <p>2 Q. That would be on the order of 900 ballasts going</p> <p>3 across Sagamore Bridge and the Bourne Bridge?</p> <p>4 A. Yes.</p> <p>5 Q. All right.</p> <p>6 MR. DOWD: Can I get clarification on</p> <p>7 that? You say 900?</p> <p>8 MR. MURPHY: Forget my example.</p> <p>9 MR. DOWD: Are you saying seven minus</p> <p>10 the two? Are you including Mashpee and Duxbury?</p> <p>11 MR. MURPHY: Forget my example. I am</p> <p>12 not including Mashpee and Duxbury. You can</p> <p>13 strike my poor math and the application of it.</p> <p>14 BY MR. MURPHY:</p> <p>15 Q. Let's stick with the question of 100 blocks per</p> <p>16 site per day irrespective of how many sites.</p> <p>17 Was that ever communicated by ACE?</p> <p>18 A. Not to my knowledge.</p> <p>19 Q. There is also a response -- or there is also a</p> <p>20 response to the January 17th offer by</p> <p>21 Mr. Eastwood of the option to pull everything</p> <p>22 into March for \$400,000. That is offered by</p> <p>23 Mr. Osgood. That is Exhibit 106. Do you see</p> <p>24 that? You were copied on that as well?</p>
<p style="text-align: center;">172</p> <p>1 A. Yes.</p> <p>2 Q. And this was an independent response. Both Mr.</p> <p>3 McLean and Mr. Osgood responded to</p> <p>4 Mr. Eastwood's letter, correct, on the 20th?</p> <p>5 A. Um-hmm.</p> <p>6 Q. And in similar fashion, if you turn down to the</p> <p>7 fourth paragraph, Mr. Osgood indicates:</p> <p>8 "ACE was under the assumption that once</p> <p>9 the down payments for the forms were received</p> <p>10 that SunLink would begin the manufacturing</p> <p>11 process and ballasts and posts would start</p> <p>12 rolling within three to four weeks."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. He says that was clearly not the case.</p> <p>16 Do you, sir, have a view with respect to</p> <p>17 that representation by Mr. Osgood?</p> <p>18 A. Yes. It is -- well, again he is referring to a</p> <p>19 starting point, a lead time, and then delivery</p> <p>20 of three to four weeks. I would point that out.</p> <p>21 The second one is that we got all the --</p> <p>22 the assumption, you know, that down payments for</p> <p>23 the forms would be received at the beginning.</p> <p>24 That was January 3rd. I believe we delivered</p>	<p style="text-align: center;">173</p> <p>1 the first ballast blocks at the end of January.</p> <p>2 Q. All right.</p> <p>3 A. So we're -- I don't know that that is clearly</p> <p>4 not the case, I guess. I would probably object</p> <p>5 to that.</p> <p>6 Q. Okay.</p> <p>7 A. But maybe. Maybe it's --</p> <p>8 Q. And it seems that Mr. Osgood is more concerned</p> <p>9 about the references in the next paragraph, the</p> <p>10 \$400,000 offer, "to meet our schedule."</p> <p>11 Do you see that?</p> <p>12 A. Yes. I see that.</p> <p>13 Q. It says:</p> <p>14 "I am also concerned about the added</p> <p>15 cost to meet our delivery schedule. We again</p> <p>16 are under the assumption that all of your costs</p> <p>17 to deliver are rolled into one price. Now we</p> <p>18 are hearing \$400,000 to meet our schedule,"</p> <p>19 et cetera, et cetera.</p> <p>20 When you received this -- go ahead. I</p> <p>21 am sorry.</p> <p>22 A. I was excited. I am sorry to cut you off. I</p> <p>23 was excited to see that point. Because it meant</p> <p>24 to me we finally have a schedule that they, you</p>

<p style="text-align: center;">174</p> <p>1 know, this is a schedule that they -- it is</p> <p>2 their schedule. He is saying this meets our</p> <p>3 schedule. It is 400,000 bucks. This is a big</p> <p>4 project. 400,000 bucks is not a lot of money --</p> <p>5 it is a lot of money -- but we are in the realm</p> <p>6 now of January 20th, January 17th, of getting to</p> <p>7 something that actually works -- right? -- so.</p> <p>8 Q. In reading this, did you think progress was</p> <p>9 being made with respect to reconciling schedule?</p> <p>10 A. Absolutely.</p> <p>11 Q. Okay. And he indicates if SunLink can't meet</p> <p>12 ACE's delivery schedule at no additional cost to</p> <p>13 ACE, he is going to have to make a</p> <p>14 recommendation to go in a different direction.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Did you see any concrete proposals to go in any</p> <p>18 different direction or --</p> <p>19 MR. MURPHY: Well, withdrawn. That is a</p> <p>20 lousy question.</p> <p>21 BY MR. MURPHY:</p> <p>22 Q. And he mentions again. He repeats it in the</p> <p>23 last paragraph. I guess I will have that</p> <p>24 question.</p>	<p style="text-align: center;">175</p> <p>1 Was there ever any suggestion, any</p> <p>2 letter or anything to us, that they were going</p> <p>3 to reach out to another supplier?</p> <p>4 A. Yes. They spoke a number of times we are going</p> <p>5 to find another supplier, we are going to do</p> <p>6 something different.</p> <p>7 Q. All right.</p> <p>8 A. Yes. It becomes a repeated refrain.</p> <p>9 Q. So you thought things were sort of coming into</p> <p>10 focus, and now turning to there was a conference</p> <p>11 call on the 21st of January apparently. Exhibit</p> <p>12 109 references it.</p> <p>13 At this time, were you in the U.S. at</p> <p>14 this time?</p> <p>15 A. I believe at this time I was probably in China.</p> <p>16 Q. Okay. Do you recall participating on the call?</p> <p>17 A. I believe -- I believe I tried to.</p> <p>18 Q. Oh, you tried to?</p> <p>19 A. Yes.</p> <p>20 Q. Now immediately -- if you turn to Exhibit 111.</p> <p>21 (Witness complying.)</p> <p>22 A. All right.</p> <p>23 Q. Immediately prior to the call -- I shouldn't say</p> <p>24 immediately -- but prior to the call, if you</p>
<p style="text-align: center;">176</p> <p>1 turn to Exhibit 111, Mr. Osgood circulated to</p> <p>2 everybody the August 1, 2013 schedule, and he</p> <p>3 indicates: "Team" -- and this is sent to ACE and</p> <p>4 to SunLink personnel -- that he wants to make</p> <p>5 sure "all involved in the conversation at 1 p.m.</p> <p>6 have a copy of the project portfolio ballast</p> <p>7 delivery schedule that was delivered back in</p> <p>8 August."</p> <p>9 And attached to it is the schedule which</p> <p>10 has already been marked independently as Exhibit</p> <p>11 12 which we talked about earlier on this.</p> <p>12 A. Yes.</p> <p>13 Q. And do you recall from the call whether this was</p> <p>14 effectively the schedule that ACE was</p> <p>15 predating its arguments to SunLink on?</p> <p>16 A. It depends on the e-mail. But yes. Yes. There</p> <p>17 are ones where -- in this case he is referring</p> <p>18 us to this, this August 1.</p> <p>19 Q. And do you recall the discussions that were</p> <p>20 transpiring relative to this at that time on the</p> <p>21 January -- on that January call?</p> <p>22 A. I don't remember a lot of the details on it.</p> <p>23 I'm not --</p> <p>24 Q. Okay. Do you recall coming out of that call</p>	<p style="text-align: center;">177</p> <p>1 that there was further discussion about, you</p> <p>2 know, options and providing even more options?</p> <p>3 A. Well, we were providing options all the time</p> <p>4 over a long period of time. So I don't -- there</p> <p>5 is not a specific one that I recall, but.</p> <p>6 Q. Let me turn your attention briefly to Exhibit</p> <p>7 117.</p> <p>8 (Witness complying.)</p> <p>9 Q. This is from Mr. Purcell.</p> <p>10 A. Um-hmm.</p> <p>11 Q. In this 117, he is offering a schedule coming</p> <p>12 out of the call. He says:</p> <p>13 "Per our recent conversation, evidently</p> <p>14 ACE wanted another schedule."</p> <p>15 A. Yes.</p> <p>16 Q. And he talked about, okay, as compared to our</p> <p>17 current schedule, he offers this schedule on</p> <p>18 January 24. It is a 1-24 schedule. And it</p> <p>19 involves pulling product in, maybe not as</p> <p>20 aggressively as the \$400,000 option, but for</p> <p>21 \$147,000 effectively he is saying we can at</p> <p>22 least move it in. Since ACE was unwilling to</p> <p>23 pay the \$400,000, can we move it into April, May</p> <p>24 more definitively, and what would this cost.</p>

<p style="text-align: right;">178</p> <p>1 Do you know if you went to suppliers to</p> <p>2 price that out?</p> <p>3 A. Yes.</p> <p>4 Q. Did you authorize this offer of \$147,000 to meet</p> <p>5 this schedule, if they didn't want the really</p> <p>6 aggressive one for \$400,000?</p> <p>7 A. I don't recall if I authorized it. I am</p> <p>8 assuming I did.</p> <p>9 Q. Would Mr. Purcell likely have sought out your</p> <p>10 approval or certainly his superiors?</p> <p>11 A. Certainly his superiors in the supply chain</p> <p>12 group. This came out of what we knew we could</p> <p>13 do it for. So I am sure that that was the</p> <p>14 check.</p> <p>15 Q. Okay. Do you know if ACE ever --</p> <p>16 ARBITRATOR EVANS: Just to go over this</p> <p>17 for a second, this is contemplating delivery</p> <p>18 program through the first week of -- excuse me</p> <p>19 -- through the week of May 5th for \$147,000?</p> <p>20 THE WITNESS: I think it is completion</p> <p>21 by the week of April the 21st, doesn't it?</p> <p>22 ARBITRATOR EVANS: I am looking at the</p> <p>23 last page of the exhibit.</p> <p>24 MR. MURPHY: The last page of the</p>	<p style="text-align: right;">179</p> <p>1 exhibit on the schedule.</p> <p>2 BY MR. MURPHY:</p> <p>3 Q. The last two are the Duxbury and Mashpee jobs?</p> <p>4 Correct?</p> <p>5 A. Oh, okay.</p> <p>6 Q. So on the CVEC project, when are the CVEC</p> <p>7 projects represented to be completed here, the</p> <p>8 ballast and the hardware?</p> <p>9 A. It looks like almost all of it by the second</p> <p>10 week of April, but maybe there was a tiny bit in</p> <p>11 the third week.</p> <p>12 Q. Harwich there? A little bit in Harwich?</p> <p>13 A. Yes.</p> <p>14 Q. Some ballast in Harwich coming in in the week of</p> <p>15 April 21? Right?</p> <p>16 A. Correct.</p> <p>17 Q. They had options to bring it in to --</p> <p>18 essentially by this time they had options to</p> <p>19 bring it into March for the most part; we talked</p> <p>20 about it a minute ago with John Eastwood's</p> <p>21 e-mail of January 17 for \$400,000. They were</p> <p>22 offered this schedule to bring it all in, as I</p> <p>23 say it, all CVEC projects in, to April for</p> <p>24 \$147,000, because they were looking for options</p>
<p style="text-align: right;">180</p> <p>1 obviously?</p> <p>2 A. That's correct.</p> <p>3 Q. And do you know if they acted on this option?</p> <p>4 A. No, they did not.</p> <p>5 Q. Now up until this point in time -- I say this</p> <p>6 point in time. Up until let's say January 27th,</p> <p>7 okay, had we ever been advised of when</p> <p>8 deliveries could be accepted at these projects?</p> <p>9 Were they presuming a five-day, all of these</p> <p>10 schedules presume a five-day delivery schedule?</p> <p>11 A. Yes.</p> <p>12 Q. Work week?</p> <p>13 A. Yes. Absolutely.</p> <p>14 Q. Did there come a point in time when you were</p> <p>15 advised otherwise?</p> <p>16 A. Yes.</p> <p>17 Q. And specifically directing your attention to</p> <p>18 Exhibit 120.</p> <p>19 (Witness complying.)</p> <p>20 Q. Mr. Osgood on January 27 here provides</p> <p>21 correspondence to SunLink personnel and others</p> <p>22 that there can't be any shipments coming in on</p> <p>23 Fridays to Brewster, Chatham and Dennis. Right?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">181</p> <p>1 Q. And had we ever heard this before?</p> <p>2 A. No.</p> <p>3 ARBITRATOR EVANS: I am sorry. Which</p> <p>4 page?</p> <p>5 MR. MURPHY: I am sorry. Exhibit 120.</p> <p>6 ARBITRATOR EVANS: Thank you.</p> <p>7 BY MR. MURPHY:</p> <p>8 Q. And had we ever been advised of this?</p> <p>9 A. No.</p> <p>10 Q. What does this information do at this point with</p> <p>11 respect to schedule?</p> <p>12 A. It is absolutely incredible to me. I mean I</p> <p>13 think most of my team was in complete shock, and</p> <p>14 I certainly was. I looked at this and said, You</p> <p>15 are telling me you have this deadline to get</p> <p>16 this stuff done. We have done all of the talk</p> <p>17 we have talked, we have gone back and forth, and</p> <p>18 now you are telling me that I am knocking out</p> <p>19 20 percent of your delivery dates?</p> <p>20 And you have to understand with regard</p> <p>21 to ballast, there is not a huge amount of space</p> <p>22 at these ballast yards. So when you knock out a</p> <p>23 delivery date, you knock out 20 percent of</p> <p>24 production unless they can stack it all up.</p>



<p style="text-align: right;">182</p> <p>1 Right?</p> <p>2 Because so this is just crazy at this</p> <p>3 point in the project to be saying we're going</p> <p>4 from delivering five days a week to now you can</p> <p>5 only deliver four days a week. So our suppliers</p> <p>6 look at us and go, "Well, what are we going to</p> <p>7 do? We have produced this stuff. We can't have</p> <p>8 the stuff back up. We produced the stuff on</p> <p>9 Thursday. We can't produce on Friday?"</p> <p>10 Q. Do precast suppliers typically have great layout</p> <p>11 area for this stuff?</p> <p>12 A. No. Particularly not for something this large.</p> <p>13 So they had a real problem with.</p> <p>14 Q. And --</p> <p>15 A. I mean this is a schedule that --</p> <p>16 Q. Do you recall ultimately the Barnstable job also</p> <p>17 being one that had some delivery problems,</p> <p>18 similar to, delivery acceptance issue?</p> <p>19 A. Yes. I think there was. There were more than</p> <p>20 just these three eventually, but.</p> <p>21 Q. If I suggested that like half of the ballast</p> <p>22 shipment here and hardware shipments were going</p> <p>23 to be impacted by this?</p> <p>24 A. Yes. I mean Dennis is one of the larger</p>	<p style="text-align: right;">183</p> <p>1 projects. These are larger projects. This is</p> <p>2 not an insignificant piece of it. As I remember</p> <p>3 I thought it was more than half, but we can</p> <p>4 look.</p> <p>5 Q. Okay. Now on the scheduling issue, it sort of</p> <p>6 continues. If you turn to, please, Exhibit 121.</p> <p>7 A. I mean this is -- just to give you an example.</p> <p>8 I want to go back to this for one second</p> <p>9 (pointing at Exhibit 120) --</p> <p>10 Q. Sure.</p> <p>11 A. -- saying this is the importance of schedule.</p> <p>12 Right? We have given our suppliers a schedule</p> <p>13 saying you produce five days a week, and you</p> <p>14 ship five days a week. We have gone into that</p> <p>15 with deposits and everything else to have these</p> <p>16 guys produce it. And we are beating on our</p> <p>17 suppliers to get faster stuff. We made a</p> <p>18 commitment to them. And then we find, out wait</p> <p>19 a second, the schedule, whatever that is at this</p> <p>20 point, is only four days a week.</p> <p>21 Suppliers are saying, what do you think?</p> <p>22 You know, we are going to charge you. This is a</p> <p>23 problem for us. Right? This is not -- so it</p> <p>24 just goes to the point that we needed a schedule</p>
<p style="text-align: right;">184</p> <p>1 for this project way back when, and I will have</p> <p>2 people in my company that you are saying, this</p> <p>3 is why we don't want to go into production on</p> <p>4 stuff without a schedule. This is a classic</p> <p>5 example -- right? -- so.</p> <p>6 Q. Turning to Exhibit 121.</p> <p>7 (Witness complying.)</p> <p>8 A. Okay.</p> <p>9 Q. And this is in direct response to Mr. -- this is</p> <p>10 an e-mail from Mr. Osgood to Mr. Purcell, and it</p> <p>11 is in direct response to Mr. Purcell's offer</p> <p>12 that we looked at a moment ago which was I think</p> <p>13 Exhibit 117, and Mr. Osgood responds to the</p> <p>14 scheduling for the \$147,000 that was offered to</p> <p>15 pull everything into at least April, and he says</p> <p>16 -- he maintains it is nowhere -- he says,</p> <p>17 Mr. Osgood to Casey, I have read your schedule.</p> <p>18 It is nowhere close to where we need to be. It</p> <p>19 puts us over our projects for a month. He talks</p> <p>20 about based on your current schedule, there</p> <p>21 would be a total of 19 weeks. And he talks</p> <p>22 about -- he sort of analyzes it. He says:</p> <p>23 "With that said, I have attached a</p> <p>24 schedule with the worst case that ACE can accept</p>	<p style="text-align: right;">185</p> <p>1 in order to meet our substantial completion</p> <p>2 deadlines -- the worst case that ACE can accept</p> <p>3 in order to meet our substantial completion</p> <p>4 deadlines."</p> <p>5 And he says:</p> <p>6 "If SunLink can't do this, we will have</p> <p>7 no other choice," et cetera.</p> <p>8 And the schedule that he attaches, it is</p> <p>9 attached here behind this exhibit, and it</p> <p>10 effectively shows everything being supplied by</p> <p>11 mid April on the CVEC projects with admittedly</p> <p>12 Duxbury and Mashpee being the outliers at the</p> <p>13 week of April 28, the week of May 5. But the</p> <p>14 CVEC projects all coming in essentially in mid</p> <p>15 -- being done by mid April. Do you see that?</p> <p>16 A. Yes. It looks to me like it is --</p> <p>17 Q. It is actually more aggressive?</p> <p>18 A. That's right.</p> <p>19 Q. A lot of zeros there. Actually the end of</p> <p>20 March?</p> <p>21 A. Yes. With a little bit in Harwich in April. Is</p> <p>22 that right?</p> <p>23 Q. Yes. They are sort of now back to now wanting</p> <p>24 -- is it fair to say this was effectively the</p>

<p style="text-align: center;">186</p> <p>1 more or less or very close to the \$400,000</p> <p>2 option that they had?</p> <p>3 A. Yes.</p> <p>4 Q. That was communicated on January 27th? Correct?</p> <p>5 A. That's correct.</p> <p>6 Q. I would like to direct your attention to Exhibit</p> <p>7 122.</p> <p>8 (Witness complying.)</p> <p>9 Q. Do you recall Mr. Purcell reporting to the</p> <p>10 senior management and commenting upon</p> <p>11 Mr. Osgood's e-mail that was just -- that we</p> <p>12 just went over, Exhibit 121?</p> <p>13 A. I remember seeing this.</p> <p>14 Q. Okay. Effectively, Mr. Purcell interlineated</p> <p>15 the points that Mr. Osgood had made, and I would</p> <p>16 just like you to look at those and ask if that</p> <p>17 effectively represents SunLink's position,</p> <p>18 certainly at that time, and arguably through</p> <p>19 today?</p> <p>20 A. Yes.</p> <p>21 Q. And he is referencing, he says the original</p> <p>22 schedule. He is talking about the August 1</p> <p>23 schedule, 15 weeks for deliveries with no ramp</p> <p>24 up or lead time and not including, you know,</p>	<p style="text-align: center;">187</p> <p>1 Duxbury and Mashpee.</p> <p>2 And he sent this on the 27th? Correct?</p> <p>3 A. Correct.</p> <p>4 Q. Now on January -- again Mr. Purcell was actually</p> <p>5 responsible for documenting sort of what was</p> <p>6 received when on the site and so forth, what was</p> <p>7 shipped when, when they started, when NTPs were</p> <p>8 received and so forth? He was cataloguing all</p> <p>9 of this information? Correct?</p> <p>10 A. Yes. And with accounting. With the team,</p> <p>11 right.</p> <p>12 Q. Okay.</p> <p>13 A. He wouldn't have had it all himself, but.</p> <p>14 Q. All right. Now there is a -- on January 27th,</p> <p>15 the same day, or actually it was e-mailed to you</p> <p>16 on the 28th, if you look at Exhibit 123.</p> <p>17 (Witness complying.)</p> <p>18 Q. This is an e-mail from Mr. Osgood to you and</p> <p>19 others, copy to Mr. McLean. The e-mail is dated</p> <p>20 the 28th. The attachment, the actual letter, is</p> <p>21 dated the 27th that is attached, and it purports</p> <p>22 to be a notice of default.</p> <p>23 Do you recall receiving this on or about</p> <p>24 the date indicated here, January 28, 27?</p>
<p style="text-align: center;">188</p> <p>1 A. Yes, I do.</p> <p>2 Q. Do you recall having any communications with</p> <p>3 anybody from ACE before your receipt of</p> <p>4 Exhibit 123?</p> <p>5 A. Yes. I received a call from Eric prior to this.</p> <p>6 Q. Okay.</p> <p>7 A. And he said, you know --</p> <p>8 Q. What did he say? Eric McLean?</p> <p>9 A. Eric McLean. Yes.</p> <p>10 Q. What did he say?</p> <p>11 A. He said we're in a situation where, you know, we</p> <p>12 are going to have to do this. I don't want this</p> <p>13 to get -- to be such an issue that we can't work</p> <p>14 through it. You know, I wanted to give you a</p> <p>15 heads up on that. We will leave it to the</p> <p>16 lawyers. Between us, we can work through. We</p> <p>17 need to continue to work through the project and</p> <p>18 keep things going. And -- and -- and that was</p> <p>19 the call that I received.</p> <p>20 Q. Okay. And Mr. Osgood sends this letter to</p> <p>21 Jonathan Eastwood. He suggests if SunLink can't</p> <p>22 remedy this default. First of all, he says your</p> <p>23 current delivery schedule, your product does not</p> <p>24 ship within the six-week time frame in the</p>	<p style="text-align: center;">189</p> <p>1 contract. Do you -- if you look at the attached</p> <p>2 -- well, I think you have gone further into the</p> <p>3 document.</p> <p>4 A. Okay.</p> <p>5 Q. If you look at 125.</p> <p>6 A. 125?</p> <p>7 Q. Sorry. 123.</p> <p>8 A. Okay. I was at 124. That's why.</p> <p>9 Q. The attachment to 123?</p> <p>10 A. The attachment to 123? After the blue sheet?</p> <p>11 Yes. Okay.</p> <p>12 Q. Mr. Osgood indicates in his default notice, he</p> <p>13 says in the second sentence:</p> <p>14 "The contracts clearly state the lead</p> <p>15 time for your product is six weeks from the date</p> <p>16 the contracts are signed and the receipt of down</p> <p>17 payment for each project."</p> <p>18 And he says, then he goes on to say, and</p> <p>19 he references the schedule, one of the schedules</p> <p>20 we just looked at, and he is calling it our</p> <p>21 current schedule.</p> <p>22 Was that our current schedule? Did he</p> <p>23 pay the \$147,000 that would have got him that</p> <p>24 schedule?</p>

<p style="text-align: center;">190</p> <p>1 A. No.</p> <p>2 Q. He says your product has not shipped within that</p> <p>3 six-week time frame.</p> <p>4 By January 27th, that six-week time</p> <p>5 frame hasn't even expired yet, correct --</p> <p>6 A. Yes.</p> <p>7 Q. -- from NTP?</p> <p>8 A. Yes.</p> <p>9 Q. And he says:</p> <p>10 "ACE will have no other choice than to</p> <p>11 take further action to protect its rights."</p> <p>12 Was there any further action ever taken</p> <p>13 by ACE, whatever further action -- it sounds</p> <p>14 legal in nature -- was there any further action,</p> <p>15 let's just say legal action, taken by ACE in</p> <p>16 respect of this?</p> <p>17 A. No.</p> <p>18 Q. Okay. Looking at the first section -- the first</p> <p>19 sentence:</p> <p>20 "American Capital Energy, Inc. would</p> <p>21 like to formally notify SunLink that you are in</p> <p>22 default of your obligations under the contracts</p> <p>23 as a result of your inability to meet the</p> <p>24 delivery schedule as defined in the contracts."</p>	<p style="text-align: center;">191</p> <p>1 Could you -- when you read this, did you</p> <p>2 have a reaction with respect to that particular</p> <p>3 issue?</p> <p>4 A. Well, there was no delivery schedule. This -- I</p> <p>5 mean we had been trying to get a delivery</p> <p>6 schedule out of these guys forever and try to</p> <p>7 get them to agree on one. It is certainly not</p> <p>8 one defined in the contracts.</p> <p>9 Q. Right.</p> <p>10 A. Just about everything in here to me appeared to</p> <p>11 be ludicrous, just not -- it didn't make sense.</p> <p>12 Q. Okay. And Exhibit 124 behind it, that you</p> <p>13 jumped to a minute ago.</p> <p>14 (Witness complying.)</p> <p>15 Q. Is this the response offered the next day by</p> <p>16 SunLink, by Jonathan --</p> <p>17 A. Eastwood.</p> <p>18 MR. MURPHY: Strike that.</p> <p>19 BY MR. MURPHY:</p> <p>20 Q. By John Eastwood the next day addressing the</p> <p>21 points and then some raised in Mr. Osgood's</p> <p>22 notice of default?</p> <p>23 A. Yes.</p> <p>24 Q. And amongst other things, the argument is made</p>
<p style="text-align: center;">192</p> <p>1 about everything not having been paid by January</p> <p>2 2nd, the notice to proceed, conference calls,</p> <p>3 layout changes, the learning of Brewster, Dennis</p> <p>4 and Chatham allowing deliveries on a four-day</p> <p>5 rather than a five-day schedule, et cetera, and</p> <p>6 yet we maintain that we are going to nonetheless</p> <p>7 work with them to try to shorten the delivery</p> <p>8 schedule as much as we can?</p> <p>9 A. That's correct.</p> <p>10 Q. Is that the state of -- is essentially, you</p> <p>11 know, SunLink's position as of that particular</p> <p>12 point in time --</p> <p>13 A. That's right.</p> <p>14 Q. -- in your organization?</p> <p>15 A. That's right.</p> <p>16 Q. Has it changed?</p> <p>17 A. No.</p> <p>18 Q. Do you know, sir -- you mentioned before -- if</p> <p>19 you would turn to Exhibit 125, please.</p> <p>20 (Witness complying.)</p> <p>21 Q. Sorry. I apologize. 127.</p> <p>22 (Witness complying.)</p> <p>23 Q. You testified to when the first loads of ballast</p> <p>24 went to Dennis and when the ballast shipments</p>	<p style="text-align: center;">193</p> <p>1 began. This suggests the first load going to</p> <p>2 Dennis the next day. The e-mail is dated</p> <p>3 January 29. Does it refresh your memory that</p> <p>4 January 30 or thereabouts were the first</p> <p>5 shipments of product?</p> <p>6 A. Yes.</p> <p>7 Q. How does that play into SunLink's position with</p> <p>8 respect to this?</p> <p>9 A. From my perspective, you know, lead time started</p> <p>10 January 3rd on these, and we are delivering</p> <p>11 within four weeks of that. So we're clearly</p> <p>12 within any lead time that we have mentioned in</p> <p>13 the contract.</p> <p>14 Q. Okay. Did your role in this, these contracts,</p> <p>15 change following the default issue at that</p> <p>16 particular level?</p> <p>17 A. Yes.</p> <p>18 Q. Could you describe how it changed a little bit?</p> <p>19 A. So, you know, I was very much leaving things to</p> <p>20 John and the rest of my team. I was involved,</p> <p>21 as I would see things, but when we got the</p> <p>22 default and it became -- it looked like it was</p> <p>23 going to be -- could be a big issue, although I</p> <p>24 couldn't -- there are a bunch of indications</p>

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1 here that were confusing as to how big an issue,  
2 but it looked like it was a big enough issue for  
3 me to step in. I became a lot, lot more active  
4 after this.

5 Q. In this dialogue?

6 A. In everything.

7 Q. Okay. Do you recall participating in a call, a  
8 conference call, Thursday, January 30th with the  
9 ACE folks and a lot of folks from both sides of  
10 the aisle, so to speak?

11 A. Yes.

12 Q. Can you describe what was going on on that call  
13 in the end of January, the very end of January?

14 A. There were enough different calls that I need a  
15 little help trying to remember which.

16 Q. Fair enough. Fair enough. If you would, let's  
17 look at -- let's start with Exhibit 132 maybe.

18 (Witness complying.)

19 Q. This is January 31st. Perhaps the call was the  
20 31st?

21 A. It was the 31st. It was this day.

22 Q. Okay. Your e-mail is dated 1:23 a.m. on Friday,  
23 January 31?

24 A. Right.

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1 go bad. I don't want anything bad to happen. I  
2 want to do the best job we can.

3 So I have stepped into this. We go into  
4 this call, and we go through here are the  
5 options. Before this call, I get the options as  
6 best I know them as they exist from my supply  
7 chain team that I can propose. And I agree --  
8 we agree based on those options that I will get  
9 back to Eric with details on them. So that's --

10 Q. You say:

11 "I committed to getting this to you this  
12 evening."

13 You say:

14 "Per our discussions today, here are the  
15 options on delivery date and options we  
16 discussed, which I committed to getting you this  
17 evening."

18 Can you walk me through this as to what  
19 you had to undertake? Obviously you -- do you  
20 recall, you know, essentially being up at this  
21 hour with this particular e-mail on the 31st?

22 A. Yes. As I recall, Eric was saying we need stuff  
23 by the end of March. Right?

24 Q. Right.

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1 Q. So you begin with "Per our discussion today."

2 Does this refresh your memory as to when you  
3 had --

4 A. I remember this one.

5 Q. -- as to when you had that call and the fruits  
6 of it?

7 A. Yes.

8 Q. Let's back up to the call itself. Can you just  
9 tell us what transpired on the call?

10 A. This is a call where we haven't been able to  
11 agree on delivery dates, delivery schedule as  
12 best I can tell. We are hearing we are in  
13 default. We are hearing they want to work with  
14 us. We are trying to work with them.

15 I am getting a lot of pushback from my  
16 team because I have had people working day and  
17 night to produce schedules for these guys,  
18 alternatives, and they are feeling like they are  
19 being yanked around, because no schedule is  
20 being accepted. So I have an internal problem  
21 moralewise in dealing with this because it is an  
22 issue.

23 I am worried about the project. They  
24 have been a good customer. I don't want this to

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1 A. So option one, this is how we get you stuff by  
2 -- everything by the end of March. You know, we  
3 have another option that pushes things out a  
4 little bit more. And that is -- you know, there  
5 is a cost for each of these. Right?

6 Q. You break it out to ballast, hardware and  
7 mounting frame deliveries? Right?

8 A. Yes.

9 Q. And as to the ballast, just focusing on the  
10 ballast for a second, the options are again  
11 what?

12 A. Yes. It is also I give two options which are  
13 the book marks. Right? One is most aggressive,  
14 kind of around here. Here is another one that I  
15 think is in the realm of the reasonable. I am  
16 saying we can do anything in between. Pick.  
17 You know, you want this one? This is the one we  
18 go with. Or we go with this one. And here are  
19 the costs associated with all of those.

20 That's -- so I will am trying to lay out  
21 a universe of a couple options for ballast. I  
22 am trying to lay out the universe of all options  
23 actually but doing it by putting the two end  
24 points and saying let's come to some meeting of

<p style="text-align: right;">198</p> <p>1 the minds.</p> <p>2 Q. And you report on the rails and the fastening</p> <p>3 hardware --</p> <p>4 A. Yes.</p> <p>5 Q. -- that is going to begin to be delivered?</p> <p>6 Right?</p> <p>7 A. That's right.</p> <p>8 Q. And you report on -- I just want direct your</p> <p>9 attention to the mounting frames issues here.</p> <p>10 What are the options being laid out here with</p> <p>11 respect to the mounting frames?</p> <p>12 A. So the mounting frames are the component that is</p> <p>13 manufactured overseas, and we have an issue with</p> <p>14 Chinese New Year's in terms of production where</p> <p>15 everything shuts down.</p> <p>16 Q. Would you explain what Chinese New Year is?</p> <p>17 A. It is like their Christmas, and it is very</p> <p>18 heavily -- everything shuts down. There is no</p> <p>19 work.</p> <p>20 Q. It is basically at the end of -- toward the end</p> <p>21 of January?</p> <p>22 A. It moves around from year to year.</p> <p>23 Q. Right.</p> <p>24 A. Right? So it is not always a set --</p>	<p style="text-align: right;">199</p> <p>1 Q. Right.</p> <p>2 A. -- time. And on this project, we miss getting</p> <p>3 our stuff in by I believe only a few days to be</p> <p>4 able to produce this stuff without an issue.</p> <p>5 Q. Okay.</p> <p>6 A. But with delays and other things, it just slid.</p> <p>7 And we don't always know exactly how long it is</p> <p>8 going to take the supplier to get materials that</p> <p>9 he needs, so our supplier in China also has to</p> <p>10 source materials elsewhere. Sometimes it can be</p> <p>11 really short; sometimes it can be long.</p> <p>12 Q. All right.</p> <p>13 A. But what happened on this project is that the</p> <p>14 production of these A-frames slid into that</p> <p>15 Chinese New Year. That meant that production</p> <p>16 was therefore going to be delayed one to two</p> <p>17 weeks because of their not going to work for one</p> <p>18 or two weeks.</p> <p>19 Q. Okay.</p> <p>20 A. Now the nice thing about the Chinese suppliers</p> <p>21 is that they have huge ability to produce. So</p> <p>22 once they start producing, the volumes can be,</p> <p>23 you know, pretty large.</p> <p>24 Now Eric was telling me that delay was</p>
<p style="text-align: right;">200</p> <p>1 very costly to them. Right? In other words, if</p> <p>2 they couldn't get the A-frames in. Ballast is</p> <p>3 one thing. But they need the A-frames. Then</p> <p>4 they can build the rest of it. So we were</p> <p>5 trying to find a way to help. And I don't know</p> <p>6 if it was in this one, but I can tell you in</p> <p>7 general we looked at a lot of options.</p> <p>8 One of the options that turned out</p> <p>9 surprisingly to be the most economic would be to</p> <p>10 air freight -- because the issue with the</p> <p>11 Chinese New Year was not just when they are</p> <p>12 produced, but then it goes on the boat to us --</p> <p>13 right? -- and then we ship. So there is a --</p> <p>14 there is a four-weeks-on-a-boat aspect of this.</p> <p>15 It adds a problem.</p> <p>16 So we looked at options of shipping, you</p> <p>17 know, via air, so putting crates on 747s and</p> <p>18 bringing them over.</p> <p>19 Q. Crates on a 747?</p> <p>20 A. Yes. And bringing them over. There was a big</p> <p>21 cost for that, but it allowed those to be</p> <p>22 delivered in a way that it could help. So I am</p> <p>23 laying out those options as well.</p> <p>24 Q. Okay. Those are down at the bottom?</p>	<p style="text-align: right;">201</p> <p>1 A. That's right.</p> <p>2 Q. And you are talking about various percentages</p> <p>3 that you can bring over by air, and you are</p> <p>4 having conversations directly -- now you are</p> <p>5 speaking directly with Mr. McLean on all of</p> <p>6 this? Correct?</p> <p>7 A. That's right.</p> <p>8 Q. Okay. And just incidentally do we ultimately --</p> <p>9 is that an option that is selected?</p> <p>10 A. Yes.</p> <p>11 Q. By --</p> <p>12 A. Yes. It is exciting. I get an option that is</p> <p>13 selected that we are actually going to go with.</p> <p>14 Q. Coming out of this letter --</p> <p>15 MR. MURPHY: Strike that.</p> <p>16 BY MR. MURPHY:</p> <p>17 Q. Coming out of this phone call, coming out of</p> <p>18 your letters, and I think this sort of exchange</p> <p>19 continues into Exhibit 133.</p> <p>20 ARBITRATOR EVANS: Before we move off</p> <p>21 this --</p> <p>22 MR. MURPHY: Sorry.</p> <p>23 ARBITRATOR EVANS: -- so the products</p> <p>24 under the mounting frame delivery, those are</p>

<p style="text-align: center;">202</p> <p>1 sourced in China? Correct?</p> <p>2 THE WITNESS: That's correct.</p> <p>3 ARBITRATOR EVANS: How about the</p> <p>4 hardware excluding the mounting frames, the</p> <p>5 rails and the fasteners? Are those made in</p> <p>6 China, too?</p> <p>7 THE WITNESS: No. The rails are made in</p> <p>8 the U.S. in Ohio. There are some other stamped</p> <p>9 parts made somewhere else in the U.S., and then</p> <p>10 the fasteners themselves are generally almost</p> <p>11 all fasteners are made in China actually or</p> <p>12 outside of the U.S., but where we would pick</p> <p>13 them up, and we picked them up on this, would be</p> <p>14 from a U.S. supplier that would have them in</p> <p>15 inventory.</p> <p>16 BY MR. MURPHY:</p> <p>17 Q. So you provide all of these options in Exhibit</p> <p>18 132, and you tell Mr. McLean that, you know, you</p> <p>19 recognize how critical the situation is, your</p> <p>20 second-to-last paragraph, and you have been</p> <p>21 working very hard to come up with solutions.</p> <p>22 "I believe we now have all viable</p> <p>23 solutions identified. In order to make any of</p> <p>24 these expedited schedules work, we must choose</p>	<p style="text-align: center;">203</p> <p>1 quickly. Please review as soon as possible and</p> <p>2 we can discuss tomorrow."</p> <p>3 And you say, you describe, "I believe</p> <p>4 it's in both our interests to make a decision</p> <p>5 tomorrow and agree on a schedule."</p> <p>6 A. Yes.</p> <p>7 Q. Was there any agreement on any of your options</p> <p>8 from Mr. McLean on the following day or any time</p> <p>9 shortly thereafter?</p> <p>10 A. No. So this was -- you know, I mean I am up to</p> <p>11 midnight getting this out. My focus is on let's</p> <p>12 get to a schedule. So everything about this was</p> <p>13 let's get this resolved. I mean let's figure</p> <p>14 out how we get on the same page. Whatever it is</p> <p>15 costwise, let's figure it out.</p> <p>16 And I can tell you that, no, I do not</p> <p>17 get a response that moves the ball in that</p> <p>18 direction.</p> <p>19 Q. Directing your attention to Exhibit 133.</p> <p>20 (Witness complying.)</p> <p>21 Q. And I am going to direct your attention to this</p> <p>22 is a string of e-mails that begins with your</p> <p>23 options e-mail that we just went over.</p> <p>24 A. Um-hmm.</p>
<p style="text-align: center;">204</p> <p>1 Q. Right behind it is Mr. McLean's response to you.</p> <p>2 He responds a few hours later. You might want</p> <p>3 to take a moment. It begins on the bottom of</p> <p>4 the page which is Bates numbered 5036, and it</p> <p>5 goes over to 5037.</p> <p>6 A. Um-hmm.</p> <p>7 Q. Does this refresh your memory as to how</p> <p>8 Mr. McLean responded to your options memo?</p> <p>9 A. Yes.</p> <p>10 Q. Effectively what was your takeaway from his</p> <p>11 response?</p> <p>12 A. Honestly I was pissed off.</p> <p>13 Q. And why?</p> <p>14 A. Because he is asking me for things like a</p> <p>15 breakdown of costs for each supplier. He is</p> <p>16 asking me for can you go out and find some other</p> <p>17 smaller concrete suppliers to do this. Can you</p> <p>18 give me the details how much equipment -- you</p> <p>19 know, he is asking for all of these details, but</p> <p>20 he is not responding to the fact of let's get</p> <p>21 anything done.</p> <p>22 And he has the audacity to say we have</p> <p>23 wasted another week and you have doing nothing.</p> <p>24 I mean I have been busting my ass on this. He</p>	<p style="text-align: center;">205</p> <p>1 is not taking any options. He keeps saying that</p> <p>2 time is of the essence, we are going to lose a</p> <p>3 lot of money, but he won't select an option. He</p> <p>4 -- that is my reaction reflected in the</p> <p>5 response.</p> <p>6 Q. He closes the letter here:</p> <p>7 "Chris, ACE has continually tried to</p> <p>8 work with your company even while you are</p> <p>9 clearly in default of our contract, and from</p> <p>10 where I stand you" -- you personally -- "have</p> <p>11 not done anything to elevate the situation. We</p> <p>12 have wasted another week and you have done</p> <p>13 nothing."</p> <p>14 Right?</p> <p>15 A. Yes.</p> <p>16 Q. And you respond with the e-mail at the top of</p> <p>17 133. And you now up at 12:07 the following</p> <p>18 day --</p> <p>19 A. Right.</p> <p>20 Q. -- I gather still on this? Right?</p> <p>21 A. Yes.</p> <p>22 Q. And what was the point of this communication</p> <p>23 effectively?</p> <p>24 A. Well, it is, look, we are going to continue to</p>

<p style="text-align: center;">206</p> <p>1 work with you. We are going to continue to try</p> <p>2 to find something. I reiterate that given the</p> <p>3 urgency of the situation I had hoped we could</p> <p>4 agree on a schedule and costs. Every day we</p> <p>5 spend analyzing different options, we run the</p> <p>6 risk of losing options we propose. We propose</p> <p>7 things. They don't act on them. And the</p> <p>8 options go away. Exactly the same scenario. My</p> <p>9 team has been telling me about it. I am</p> <p>10 experiencing it firsthand here. And then throw</p> <p>11 in this kind of -- excuse my language -- but</p> <p>12 this crap at the end of us being in default</p> <p>13 irritates me. I say we are not in default. To</p> <p>14 say we haven't elevated it is ridiculous. You</p> <p>15 have the CEO, the chairman, the CFO, you have</p> <p>16 everybody working on it. So I am saying, look,</p> <p>17 we are not -- it is not productive doing this</p> <p>18 back and forth and arguing over it. We need to</p> <p>19 push forward and try options that you want. But</p> <p>20 I am pretty discouraged at the end of this.</p> <p>21 Q. On the same day, the day isn't over yet for you.</p> <p>22 If you turn to Exhibit 134, you provide some of</p> <p>23 the options that had been or some of the detail,</p> <p>24 I should say, concerning the mounting frames,</p>	<p style="text-align: center;">207</p> <p>1 some of the questions that Mr. McLean had put to</p> <p>2 you? Correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And you provide further explication of</p> <p>5 the options surrounding the potential</p> <p>6 alternative to air freight of the mounting</p> <p>7 frames?</p> <p>8 A. Yes. I am working my team pretty damn hard to</p> <p>9 get this kind of stuff, too. This is not stuff</p> <p>10 you just figure out. You have to call suppliers</p> <p>11 and figure out what they are. I am saying my</p> <p>12 suppliers are getting pretty damn skittish on a</p> <p>13 lot of this stuff because --</p> <p>14 Q. At this time or shortly thereafter, do we reach</p> <p>15 -- you said the first time an option was</p> <p>16 selected was concerning the air freight for the</p> <p>17 mounting frames? Correct?</p> <p>18 A. Yes.</p> <p>19 Q. Directing your attention to Exhibit 139, please.</p> <p>20 (Witness complying.)</p> <p>21 Q. It is an e-mail from Mr. McLean on February 3,</p> <p>22 2014. He is responding to your e-mail, your</p> <p>23 precedent e-mail here, and apparently a phone</p> <p>24 call you had that day with him on or about the</p>
<p style="text-align: center;">208</p> <p>1 3rd where you had more conversation relative to</p> <p>2 -- again all stemming back from sort of options</p> <p>3 provided on January 31 by you. How do you read</p> <p>4 this particular letter when you receive it? Do</p> <p>5 I read it to understand that on or about this</p> <p>6 time Mr. McLean finally sort of said yes to the</p> <p>7 options on the A-frames?</p> <p>8 A. Yes. I am happy about that at least.</p> <p>9 Q. And what is the ultimate resolve on the mounting</p> <p>10 frames and shipping them via air, at least a</p> <p>11 percentage of them by air?</p> <p>12 A. We -- we shipped the first few percentage by air</p> <p>13 so that they can get moving. They will be</p> <p>14 delivered. And we actually agree to split the</p> <p>15 cost of that air freight.</p> <p>16 Q. So ACE and you, SunLink, agree to go 50-50 on</p> <p>17 the cost of the 747 --</p> <p>18 A. Yes.</p> <p>19 Q. -- to bring a percentage of the frames into the</p> <p>20 U.S.?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. And do you recall how many different</p> <p>23 shipments there were?</p> <p>24 A. I believe there were three when it was all said</p>	<p style="text-align: center;">209</p> <p>1 and done. It was either two or three.</p> <p>2 ARBITRATOR EVANS: Two or three plane</p> <p>3 shipments?</p> <p>4 THE WITNESS: Yes. Two or three. Yes.</p> <p>5 BY MR. MURPHY:</p> <p>6 Q. So Mr. McLean, however, while he apparently</p> <p>7 accepted the offer with regard to the mounting</p> <p>8 frames, he did not undertake the election at</p> <p>9 this time, or at least by February 3rd, of any</p> <p>10 cost sharing or anything else or action on your</p> <p>11 options you presented for pulling the ballast</p> <p>12 into either March or to April?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. And in lieu of that, what was his</p> <p>15 position? Was he just asking for better</p> <p>16 scheduling with no costs?</p> <p>17 A. I think we were asking -- we will have to go to</p> <p>18 the e-mails. But it was more detail. More</p> <p>19 options. More detail. More options.</p> <p>20 Q. Okay. But no election --</p> <p>21 A. No election.</p> <p>22 Q. -- on the \$400,000, or the \$150,000 -- the</p> <p>23 \$147,000?</p> <p>24 A. No.</p>

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1 Q. Turning your attention to Exhibit 141.  
 2 (Witness complying.)  
 3 Q. This is a follow-up letter to the original  
 4 notice of default. It is called a second notice  
 5 of default, but it is actually a response to the  
 6 — it is a response to the response that SunLink  
 7 had provided to the notice of default received  
 8 January 27th? Correct?  
 9 A. Yes.  
 10 Q. And do you recall receiving this document? This  
 11 one is signed by Mr. McLean. The first one was  
 12 signed by Mr. Osgood.  
 13 A. Yes.  
 14 Q. Had you any forewarning of this particular  
 15 default coming?  
 16 A. Not that I remember.  
 17 Q. Okay. And again there is sort of a -- you know,  
 18 sort of, respectively, a rehash of their  
 19 arguments that the contract states the deadline  
 20 is six weeks and what the freight on board  
 21 points are. Skipping down, he clearly says that  
 22 delivery will occur four to six weeks from  
 23 notice to proceed. They are still maintaining  
 24 that. At no time did SunLink indicate that

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1 than people want, but our contract with our  
 2 Chinese supplier is for them to deliver -- our  
 3 FOB point with them is San Leandro. So they  
 4 deliver it to us in San Leandro in Oakland.  
 5 Right? That is our cost from them. Once they  
 6 deliver it, we have it. That goes into  
 7 inventory and we inspect it. Our FOB point to  
 8 our customers is San Leandro. FOB and where it  
 9 is manufactured are two different things. If  
 10 you want it manufactured in the U.S., you tell  
 11 me in my contract that's what you want. We did  
 12 not, contrary to all the stuff I have heard and  
 13 seen in the e-mails, we were not saying we were  
 14 going to make all of this for you in the U.S.  
 15 Q. In terms of extending to more than 15 weeks, do  
 16 you understand that to be a reference to that  
 17 August schedule?  
 18 A. I don't know what it is.  
 19 Q. Okay. But if the delivery times are 15 weeks  
 20 and there is --  
 21 A. The August schedule was about a 15-week delivery  
 22 time period, so that would make sense, but I am  
 23 not sure.  
 24 Q. He says deliveries will occur four to fix weeks

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1 equipment would be sourced out of the country  
 2 and that delivery times would extend for more  
 3 than 15 weeks.  
 4 Just on the issue of whether there were  
 5 communications about sourcing product outside  
 6 the country, first of all, is that at all  
 7 relevant to what you were doing?  
 8 A. Not to me at all.  
 9 Q. Could you explain that?  
 10 A. If we buy fasteners in China, we bring them into  
 11 San Leandro and we inspect them, and we sign a  
 12 contract FOB San Leandro. You know, there are  
 13 essentially no fasteners, you may not know this,  
 14 that are made in the U.S. anymore. Right? I  
 15 don't have a buy American provision. I asked my  
 16 team did we ever represent that this was all  
 17 going to be made in the U.S., you know, in the  
 18 context of let's take a year before this  
 19 contract. No one said they did. Right? So I  
 20 don't know where this is coming from. Right? I  
 21 mean not -- it shouldn't have been a surprise.  
 22 The FOB point for our China product is  
 23 San Leandro. Right? I mean it is not -- our  
 24 contract, this may be a little more detailed

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1 from notice to proceed. Is that the lead time?  
 2 A. It should be. I mean that is what I assume.  
 3 Q. On a combined basis you have 19 -- strike that  
 4 -- you have somewhere between 19 and 21 weeks --  
 5 A. That's right.  
 6 Q. -- that he is talking about in this? That is  
 7 how you interpreted this e-mail?  
 8 A. Right. That is how I interpreted a lot of this.  
 9 Yes.  
 10 Q. All right. There is indication on the issue of  
 11 the -- it says:  
 12 "ACE executed contracts and forwarded  
 13 sums in excess of \$903,000."  
 14 Do you know what that is referring to?  
 15 A. No. I can't say. I guess I would guess that  
 16 may be --  
 17 Q. Do you think that is the Duxbury-Mashpee?  
 18 A. I believe so.  
 19 Q. You were not forwarded sums on the CVEC jobs of  
 20 \$903,000?  
 21 A. No. I was not.  
 22 Q. In fact you received nothing -- little beyond  
 23 the deposits?  
 24 A. That's correct.



<p style="text-align: center;">214</p> <p>1 Q. You know they are accusing you of deceptive 2 practices under 97A and that SunLink will not 3 live up to -- et cetera. 4 Now it says on the next page that: 5 "If SunLink cannot remedy this default 6 and provide ACE with an acceptable damage-free 7 delivery schedule, ACE will have no other 8 recourse than to commence legal action. A copy 9 of this letter has been forwarded to outside 10 general counsel, Mr. Dowd, who will proceed with 11 all legal remedies, including trustee process 12 and attachment proceedings to seek recovery of 13 said deposits pursuant to Mass. General Laws. 14 ACE demands SunLink submit and commit to a 15 revised schedule no later than February 7th." 16 Was there ever any commencement of legal 17 action ever by ACE under this particular 18 contract? 19 A. No. 20 Q. No legal remedies, trustee processes, 21 attachments proceedings, nothing to recover 22 deposits made by these? 23 A. No. 24 Q. Did we ever commit, you know, incidentally, to a</p>	<p style="text-align: center;">215</p> <p>1 revised schedule within any time frame that they 2 are demanding here on the second page beyond the 3 1-10 schedule? 4 A. No. 5 ARBITRATOR EVANS: Beyond the what? I 6 am sorry. 7 MR. MURPHY: The 1-10 schedule. 8 BY MR. MURPHY: 9 Q. Had we agreed to commit to the 1-10 schedule? 10 A. Yes. We had. We said this was the commitment 11 -- committed in the sense that this is the 12 schedule we are working toward. 13 Q. You kept working against that January schedule? 14 A. Yes. That is the one we said we informed them 15 in the middle of January this is the schedule we 16 are working toward until we come up with 17 something else. We tried to improve it. 18 Q. Even though you had myriad of ones with monetary 19 solutions, the January 10th you stuck with 20 unless and until you had the money to do 21 something different? 22 A. Right. An agreement to do something different. 23 ARBITRATOR EVANS: Is that then the 24 position of SunLink in this case that the</p>
<p style="text-align: center;">216</p> <p>1 operative schedule is the January 10th schedule? 2 MR. MURPHY: I will let you. Go ahead. 3 THE WITNESS: I don't know if there is 4 an operative schedule in this case. Right? It 5 is the one we worked on on our own behalf. It 6 was never accepted by them. 7 MR. MURPHY: Candidly I don't think 8 there was ever a firm agreement from ACE 9 accepting any schedule. 10 ARBITRATOR EVANS: That is what you were 11 relying or working towards? 12 MR. MURPHY: Correct. Correct. And 13 that is what we had committed to. 14 ARBITRATOR EVANS: And I know it is a 15 disputed point. Right. I just wanted to 16 understand their position. 17 THE WITNESS: Up until this point. 18 Eventually, there are some things that they 19 agree to that we will -- 20 MR. MURPHY: Yes. The story doesn't end 21 there. 22 MR. DOWD: Mr. Evans, can we break for a 23 little bit? 24 ARBITRATOR EVANS: Sure.</p>	<p style="text-align: center;">217</p> <p>1 MR. MURPHY: I missed what you are 2 saying. 3 MR. DOWD: I was wondering if we can 4 break in a little bit. 5 MR. MURPHY: Sure. 6 ARBITRATOR EVANS: Do you want to take a 7 15-minute break now? 8 MR. MURPHY: Sure. That would be fine. 9 Thank you. 10 (Recess taken at 2:59 p.m.) 11 12 (Recess ended at 3:14 p.m.) 13 ARBITRATOR EVANS: Are you ready? 14 MR. DOWD: Yes, sir. 15 MR. MURPHY: Yes, I am. Thank you. 16 BY MR. MURPHY: 17 Q. Mr. Tilley, we had left off I think looking at 18 Exhibit 141 -- 19 A. Yes. 20 Q. -- which was the follow-up letter on 21 February 4th from ACE. Do you know who a G.L. 22 Harvey is? Does that mean anything to you? 23 A. Yes. 24 Q. Who is that?</p>

<p style="text-align: center;">218</p> <p>1 A. He was the owner -- I am trying to remember 2 whether he was owner -- owner of another set of 3 projects. Maybe Mashpee or Duxbury. It might 4 have been another one. 5 Q. On the same day that you received this Exhibit 6 141, the February 4th follow-up letter alleging 7 defaults, if you turn to Exhibit 143? 8 A. Um-hmm. 9 (Witness complying.) 10 Q. On that same day we were awarded -- we received 11 a commitment from American Capital Energy for 12 the supply of a mounting system associated with 13 the Charlotte post mounted GS project? 14 A. Right. 15 Q. Obviously Eric McLean is copied on this. It is 16 sent from John Eastwood to Mr. or Ms. Harvey 17 confirming that commitment? Correct? 18 A. That's correct. 19 Q. Did we in fact perform that project that was 20 awarded to us on February 4th? 21 A. Yes. 22 Is that the same day as we get the 23 default letter? I haven't looked at that. 24 Q. It is the same day as the letter. Yes.</p>	<p style="text-align: center;">219</p> <p>1 A. Okay. 2 Q. And you never heard from Mr. Dowd about 3 commencing legal action -- 4 A. No. 5 Q. -- as we talked about in the default letter? 6 A. That's right. 7 Q. Okay. At about this time, you know, mid -- sort 8 of February-ish, can you tell me sort of what 9 was happening next, where we were in the 10 project, where we were sort of with options? 11 Had they only exercised options, if you will, on 12 the mounting frames? 13 A. I believe that is the case. Yes. 14 Q. Okay. Did that situation persist? 15 A. I am sorry. What do you mean "persist"? 16 Q. Okay. Let's just ask it this way. 17 So just if you look at Exhibit 147, you 18 followed up with Mr. McLean again on the 19 mounting frames issue and so forth? 20 A. Yes. 21 Q. You continued to provide information to him? 22 Correct? 23 A. Um-hmm. 24 Q. And that schedule was agreed upon.</p>
<p style="text-align: center;">220</p> <p>1 Now as of in Exhibit 149, at some point 2 we put together a response -- the company 3 responded to the second letter that we looked at 4 of alleged default, which was the Exhibit 141, 5 and that is Exhibit 149. Correct? 6 A. That's correct. 7 Q. Okay. And the last paragraph, you talk about 8 working around the clock in collaboration and 9 mutual agreement, and SunLink has provided 10 alternative proposals and schedules, the most 11 recent being Casey, and we reference his on 12 January 24th. That was the \$147,000. We 13 reference your options on 1-31. And, you know, 14 we are looking for action on these options. 15 Correct? 16 A. Yes. 17 Q. And as of this date, they had elected none of 18 them? 19 A. That's correct. 20 Q. And this date being February 12th? Mid 21 February? 22 A. That's right. 23 Q. So they almost had the options for about a 24 month, close to a month, a little shy of a month</p>	<p style="text-align: center;">221</p> <p>1 from Mr. Eastwood? Correct? 2 A. Correct. 3 Q. And Casey is on the 24th; you are on January 4 31st. None of those get acted on? 5 A. Right. Some of those expired. Right? You 6 can't keep -- you have a window to do some of 7 these things. Right? So. 8 Q. Did there come a point when ACE was 9 reprioritizing the sites in terms of which got 10 deliveries when? Do you remember any of that? 11 A. Yes. We were definitely trying to ship -- you 12 know, there are certain ones that need to get 13 done first. I believe the Eastham had to get 14 done by the end of February or the end of March, 15 I don't remember the exact date, but there was a 16 lot of work trying to shuffle delivery so that 17 we met those schedules. Right? 18 Q. Okay. So at some point they said -- you know, 19 they started shifting deliveries to Eastham to 20 try to get that one completed earlier than the 21 others? 22 A. That's right. 23 Q. And we worked with them on that and solved that? 24 Correct?</p>